CITY OF NEW YORK
LAW DEPARTMENT

ANNUAL REPORT
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PAUL WINDELS
Corporation Counsel

CONTENTS

ORGANIZATION OF THE DEPARTMENT

EXECUTIVE

Corporation Counsel.....PAUL WINDELS
First Assistant Corporation Counsel.....WILLIAM C. CHANLER
Assistant to the Corporation Counsel.....ROBERT C. RAND
Executive Assistant.....ARTHUR L. MARVIN
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Assistant Chief Clerk.....JOHN A. LEDDY

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Admiralty.....P. FEARSON SHORTRIDGE
Appeals.....PAXTON BLAIR
Claims and Judgments.....HAROLD N. WHITEHOUSE
Contracts.....ALVIN McK. SYLVESTER
Franchises.....JOSEPH L. WEINER
General Litigation.....RUSSELL LORD TARBOX
Legislative.....REUBEN A. LAZARUS
Penalties.....CHARLES C. WEINSTEIN
Real Estate.....ANSON GETMAN
PHILLIP W. HABERMAN, JR.
(*Assistant in Charge of Litigation*)
Taxes.....OSCAR S. COX
Torts.....FREDERICK V.P. BRYAN
Transit Litigation.....CHARLES BLANDY
Water Supply.....GEORGE S. PARSONS
Workmen's Compensation.....SAMUEL A. BLOOM
Brooklyn Office.....WILLIAM R. WILSON

LAW DEPARTMENT

City of New York

April 30, 1937.

Honorable F. H. LaGuardia,
Mayor.

Sir:

The annual report of the law department for the year 1936 is submitted herewith.

In the last report there was presented a statistical analysis of our progress as reflected by a comparison of annual averages for the first two years of this administration with corresponding annual averages for the preceding decade in respect to the number of actions tried, the total amount of annual recoveries against the city and the average recovery per case. We have continued that comparative analysis for the third year of the administration and present it herewith as follows:

	Annual Average 1924-1933	Annual Average 1934-1935-1936	Percentage of Increase (+) or Decrease (—) 1934-1935-1936
Actions tried	599	1,448	+ 141%
Recoveries against the City	$1,911,325	$1,252,965	— 34%
Average recovery per case	$3,190	$867	— 73%

If there were any doubt of the practicability of operating this department upon a non-political basis, that doubt has been removed by the record of the past three years. During that time we had no more trial attorneys than formerly, nor do we employ special counsel who were so much in vogue in former days. In fact, the staff, except in the bureau of street openings, is little larger than it was ten years ago and its budget appropriation is less.

Summary

Attention is called to the following summary statement of some of the results of our efforts last year:

(1) Holding judgments and settlements in tort actions disposed of during the year to 1.78% of the amount sued for. The

total amount claimed was $28,283,144. The total amount recovered by verdicts and settlements was $505,842.

(2) Holding judgments and settlements in contract actions disposed of during the year to 8.2% of the amount sued for. The total amount claimed was $2,636,330., the total amount recovered by verdicts and settlements was $217,474. In 1932 these recoveries were 21.3% of the amount sued for. In 1933 they were 22.5%. In 1934 they were 4.7%. In 1935 they were 3.8% and in 1936, 8.2%. As to volume of work in the three years, 1934 to 1936 inclusive, the contract division disposed of *by trial* 438 cases which is more than the total number tried in the fifteen years 1919-1933 inclusive.

(3) Holding reductions on settlements in certiorari proceedings to .08% and on trials to 2.64% of the assessed valuations. In the period from 1929 through 1933 the average by settlements amounted to 6.75% and by trial to 10.18%. In 1935 five times as many proceedings were disposed of as the average of the preceding five years and during 1936, nine times as many.

(4) Sustaining in the Court of Appeals the validity of the submission of the proposed charter and proportional representation to the electorate in the election of 1936.

(5) Procuring an affirmance in the Appellate Division and in the Court of Appeals of the order of Mr. Justice Conway setting aside an award to the Lucmay Realty Corporation in the Bergen Beach case. On December 31, 1936, this award with interest amounted to $4,100,000. This case has since been retried and a decision is awaited.

(6) Obtaining from claimants in the Grand Central Parkway-Union Turnpike case, who held tentative awards of the Supreme Court amounting with interest to $5,817,551., a settlement for $4,534,356. This reduction of $1,283,195. was obtained by negotiations with them.

(7) Collecting from New York Railways Company $349,000. on old paving claims. After successfully resisting the company's appeal to the United States Supreme Court we finally obtained a check for this amount. Some of the claims dated back to 1919 and nothing had been done to collect them since 1929.

(8) Settling litigation with Manhattan and Queens Traction Corporation, which resulted in payment of $342,238; the surrender of the company's franchises; making possible the motorization of this route; the removal of tracks on Queens Boulevard and its reconstruction as an important vehicular highway. This litigation dated back to 1917.

(9) Continuing in cooperation with the Department of Taxes and Assessments, an investigation with a specialized corps of utility engineers which yielded an increase of $116,383,675. in the assessments of real property of certain utilities which had previously been under-assessed for at least 10 years. In terms of tax income this represents about $3,000,000., or 1.5 points in the tax rate. It is in addition to the increase of $203,000,000. made in the prior year, which resulted in an increase of $5,000,000. in tax income.

(10) Successfully defending in the Court of Appeals the constitutionality of the provision of the Housing Authority Act, which conferred upon the Authority the right to condemn land for slum clearance as a public purpose.

(11) Successfully asserting in the Court of Appeals the title of the City of New York to the Rockaway shore front south of the highwater line. This land had been publicly owned since the 17th century. Nevertheless the City condemned it in 1929 and paid for it an estimated amount of $3,600,000.

(12) Obtaining from the Supreme Court an order of restitution in the Matter of Boscobel Avenue, where an award had been obtained for total destruction and a part of the building had thereafter been used. Reference is made to this later in the report.

(13) Completing within a year after authorization the condemnation trial of the World's Fair site. (First Proceeding) Title to 400 acres was acquired—the largest proceeding of which we have a record.

(14) Conducting six condemnation proceedings in five counties to acquire property for the new aqueduct from the Delaware watershed and completing acquisition of title by December 1st.

(15) Adjusting disputes with counties, municipalities and tax districts in which the City owns property used for water supply purposes. Of 300 legal proceedings found upon the books, settlements have been agreed upon in over 200.

(16) Preparing legislation creating the New York City Tunnel Authority and as counsel to it, taking steps necessary to obtain a Federal loan of $47,130,000., let construction contracts and purchase the real property required.

(17) Putting trial of condemnation proceedings upon a current basis and disposing of the bulk of unfinished proceedings. During the year we forwarded to the Comptroller for payment over $26,000,000 of awards upon a large portion of which interest was running at 6%.

(18) Sustaining in the Appellate Courts eight out of nine rulings of the Board of Standards and Appeals from which appeals were taken, and 29 out of 30 appeals taken from rulings of the Board of Education. The authority of both boards has been strengthened by this result.

(19) Trying or otherwise disposing of every franchise case commenced prior to January 1, 1934. Some cases dated from 1905 and 1906 and the most recent was started in 1928.

(20) Taking measures, in cooperation with the heads of City departments, to reduce accidents chargeable to the City's activities. We collected statistics and submitted reports to department heads which have resulted in additional precautionary measures and a reduction in the number of injuries caused by the City's equipment and personnel.

(21) Prosecuting more effectively claims against recipients of public relief discovered to have assets or other means of support and against estates of deceased recipients resulting in the recovery of many thousands of dollars, and establishing more firmly the rules of law applicable in this relatively new field of litigation.

The following are important matters in which we did not succeed during the year.

(1) We were unsuccessful in our efforts to recover from the sureties, on the bond of a former Chamberlain, the amount of a

judgment recovered against the City by one for whom funds had been deposited with the Chamberlain's office, which had been impaired or lost by the Chamberlain's investments. We took an appeal to the Appellate Division, which is now pending.

(2) In *People ex rel. Cooper Union* v. *Sexton,* the Court of Appeals held that the Chrysler Building and the property upon which it stands were exempt from real property taxes by reason of the exemption granted to Cooper Union at the time of its creation. Our contention was that although the property in question is owned by Cooper Union it was not within the exemption statute because it was not deeded to the Union until years after incorporation and had never been devoted to or used for charitable purposes.

(3) *City of New York* v. *New York, Westchester and Boston Railroad Co.* We were unsuccessful on our appeal to the Court of Appeals from a reversal by the Appellate Division of the judgment for $472,000. obtained in the trial court against the railroad company, representing the cost of construction of an approach to a bridge carrying 174th Street over the defendant's tracks in the Borough of Bronx.

(4) The action brought in the Province of Quebec on behalf of the City of New York but in the name of the State of New York against the late John M. Phillips to recover $312,000. and interest deposited in a safe deposit vault in Montreal, has not been concluded. The City contends that the money is part of the proceeds of the Queens Sewer Conspiracy. Upon the trial the lower court decided against the City. An appeal is pending to the Court of Appeals of the Province of Quebec.

Condemnation

Through the year much progress has been made in disposing of old condemnation proceedings. The report of the real estate division is most encouraging. It indicates that we are on a current basis with our trials and are making rapid progress in disposing of tentative and final decrees in older matters. During the past year final decrees have been forwarded to the Comptroller authorizing the payment of awards of over $26,000,000. As has been previously pointed out, this is of the greatest importance in the saving of interest. Formerly it took about five

years to complete a condemnation proceeding, that is from the date of authorization by the Board of Estimate to the entry of the final decree. For a period of twenty years the City has found it necessary to acquire over $25,000,000. worth of real estate every year. In most cases interest ran from the commencement of the proceeding, i.e., when title vested. It is a simple mathematical computation to estimate what five times 6% on $25,000,000. means in interest dollars every year. This condition has been corrected by the addition of title examiners and computers to the staff at a relatively insignificant cost, and with the help of the judges sitting in Special Term for condemnation in both the 1st and 2nd Departments.

As compared with the average five year record of delay in condemnation proceedings, particularly conspicuous in large proceedings, the following are four examples of how the department is now operating.

In the Williamsburg housing project, where we acted for the Federal Government, the proceeding was authorized on May 14, 1935, title vested on June 3, the trial started June 28, was completed on July 26 and the final decree entered on September 25, and all awards paid within a few weeks thereafter. Eleven city blocks were acquired.

In the Brooklyn Bridge Plaza proceeding, involving four city blocks, only nine months elapsed between the authorization of the proceeding and the conclusion of the trial. The claimants were paid shortly thereafter.

In the proceeding for the acquirement of the World's Fair site, to be known as Flushing Meadow Park, the first proceeding, involving over 400 acres, one of the largest in the history of the City, was authorized on May 1, 1936, title vested on May 15, the trial commenced on July 27, continued almost daily until December 2, and the awards were made on December 19—all in the same year.

The awards in the Williamsburg housing case were 8% over, in the Brooklyn Bridge Plaza case 12% over, and in the Flushing Park case about 6% over the estimates of the City's appraisers. The general average now is about 10% over the City's estimates. Formerly they averaged at least 50% over and ran from that figure all the way up to 500% over the City's estimates.

Commencement of work on the new Delaware water system was authorized by a vote of the Board of Estimate on June 6, last, and in three months after the maps were approved we had vested title to 85 miles of right-of-way.

A matter of less general interest, yet one which was a hindrance to our work in condemnation proceedings, was the number of unpaid, unadjusted and in some cases unauthorized bills for experts in real estate matters. Claims ran back for years and came from scores of experts. The situation was unfair to them as well as to the City. Many of them were compelled to borrow money upon their claims and to pay high rates of interest. During the past year we have adjusted and taxed for payment $913,412., face value of these bills at a cost to the City of $650,948. We enter 1937 with the relations between the City and its real estate experts upon a business-like basis.

Bergen Beach Proceeding

The order of Mr. Justice Conway setting aside the award to the Lucmay Realty Corporation in the Bergen Beach case was affirmed both by the Appellate Division, 2nd Department, and by the Court of Appeals. The day after the decision of the Court of Appeals was announced the retrial started before Mr. Justice Lockwood and was completed within three months. A decision is expected shortly.

On the retrial the claimants could not find a responsible real estate expert who would go on the witness stand and testify that the property was worth within $300,000. of what the court awarded on the first trial. On that occasion (first trial) when asked why the property should in eight months increase 2000% in value, as the owners claimed it did, they said it was because they had purchased a defective title, had perfected it and had given the City a good title. Now this improvement in their title was due to a quit claim deed which they obtained to some land under water. That deed was given by the City of New York while the condemnation proceeding was in the process of being authorized and without consideration. To cover this dubious transaction with an air of respectability the owner's attorney agreed not to use the City's quit claim deed to increase their claim for damages. That stipulation disappeared, has never since been found in the files of the law department and was violated at the trial.

On January 1, 1934, we were confronted with this judgment, valid and binding on its face. The time to appeal had expired and no appeal had been taken. In spite of these obstacles an exhaustive examination of the facts enabled us to present to the court a case so completely perfected and documented as to warrant setting aside this notoriously exorbitant award.

The decree set aside by Mr. Justice Conway on April 12, 1935, was for a principal amount of $2,569,909. awarded for property for which the claimant had paid $275,000. eight months before. On the day Judge Conway's action in setting aside the award was affirmed by the Court of Appeals, the total including interest amounted to a little over $4,100,000.

Following Judge Conway's decision setting the award aside, the abutting owner of a smaller parcel in the same proceeding, who was innocent of fraud but had been unjustly enriched by the false values so established, voluntarily accepted a cut in his judgment of over $77,000.

Marba Sea Bay Decision

In December the Court of Appeals affirmed the decision of the Appellate Division in the Second Department, upholding the claim of title of the City to most of the under-water land along the Rockaway Peninsula up to the old high water mark. The owner in this appeal claimed title to the land under the patent of Governor Dongan to John Palmer in 1685. The Court of Appeals in sustaining our contention has held that the Colonial grant was void in so far as it attempted to convey the foreshore. Consequently the property in dispute never passed into private ownership and has been the property of the City of New York since consolidation.

Now it so happens that in 1925 the City of New York wished to construct a boardwalk through some of this land. Condemnation proceedings were started. After the first trial there were awards of approximately $12,000,000. which led to a public outcry and a retrial which reduced the awards to $9,000,000. In the second trial, the claim of public ownership was raised and decided against the city by the trial judge and no appeal was taken. So that at that time, on the basis of a decision of a trial judge, the City of New York paid what we estimate to be about $3,600,000. of the

$9,000,000. of total awards to private claimants for land which it owned and which had been publicly owned for 250 years.

Unfortunately there is not the slightest possibility of our ever getting this money back.

The question which should have been settled in the condemnation proceeding was finally determined collaterally. It seems that the claim of the City was always latent in all title questions pertaining to the waterfront and in a partition suit between private parties affecting some of this land the City was joined as a party defendant in order that the claim of title could be finally disposed of.

Boscobel Avenue Proceeding

A few years ago an assistant tried a proceeding for the widening of Boscobel Avenue in the Bronx. The line ran through an apartment house. The owner claimed that the remainder of the house left after the widening would be useless and that therefore he was entitled to recover for the total destruction of the improvement. That was his testimony and on that basis the court awarded him the total value of the building. We protested and told both the trial judge and the Appellate Courts that the remainder of the building was usable and had a value, but were unable to convince them and the judgment was paid. However, we watched the building. As soon as the Court of Appeals affirmed the judgment the owner proceeded promptly to remodel the rest of the building and, to add insult to injury, used for that purpose the layout shown by the very plans which the City had offered in evidence at the trial to prove that the building could still be used.

That sort of thing had happened before and the owner and his attorney undoubtedly looked upon it as just one of the tricks of the trade.

We went back to the trial judge, told him the story and obtained from him an order of restitution. Negotiations are now under way for a settlement. The owner has already offered $55,000. in cash to the City for which he has given security. We have not yet reached the end of the negotiation.

Grand Central Parkway Proceeding

One of the condemnation proceedings which we inherited and to which reference has been made in the reports for 1934 and 1935 was Grand Central Parkway-Union Turnpike.

It will be recalled that in this proceeding we asserted and successfully defended in all the courts our right to the use of an examination before trial to sustain objections to a tentative decree.

Following the decision of the Court of Appeals sustaining this right we proceeded with the examination before trial and presented additional evidence to the Supreme Court to support our objections to what we believed to be excessive awards.

The proceedings were commenced in 1929. Over a thousand persons, represented by more than 100 attorneys, were interested in the 543 parcels taken.

The tentative decree was filed in July, 1934, awarding total damages against the City of $6,259,541.72.

During the pendency of the hearings on objections to the tentative awards negotiations were undertaken with attorneys representing the claimants whose claims with interest totaled $5,817,551.86. On the agreement to pay them promptly if our offers were accepted and after obtaining the consent of the Board of Estimate to enter separate partial final decrees after settlements were made, we disposed of $5,817,551.86 of awards for $4,534,356.32, a saving of $1,283,195.54. If these awards so settled had proceeded as rapidly as possible to final decree without settlements, there would have been an additional interest charge of $275,000.(1)

Motorization of Surface Transportation

All franchise cases and proceedings commenced prior to 1934 have been concluded or carried through the trial stage. The oldest of this group had been commenced in 1905 and the most recent in 1928. All of them involved matters of importance and some, like the Eighth and Ninth Avenues Railway Company, the trans-

(1) The remaining awards have been adjudicated in the light of the valuations established by the above described settlements. The final decree entered on April 21, 1937 showed a further saving of $311,565. plus interest, or a total additional saving of approximately $420,000.

former vaults and New York Railway paving claims, were of general public interest and importance.

With the motorization of the Eighth and Ninth Avenues system reported last year, the situation in the Borough of Manhattan was brought to the point where the entire borough is completely motorized except for the Third Avenue system.

During the past year substantial progress has been made in completing the motorization of surface routes in Queens County. The law department was represented on the committee which has been working out the four-zone system, three of which are now in operation. In addition, members of the staff have successfully conducted negotiations with Manhattan and Queens Traction Corporation, which led to payment to the City of $341,000. in settlement of the City's claims and a surrender of the company's street car franchise. This matter had been pending for 19 years. Within a few weeks the trolleys will cease running and the tracks will be removed. Not only will buses be substituted for trolley operation, but the removal of the tracks makes possible a long delayed and badly needed program for the improvement of Queens Boulevard as an important vehicular highway in Queens Borough.

Three street car routes in Queens are operated by New York and Queens Transit Corporation. We commenced an action to invalidate some of the franchises, which action was instrumental in bringing that company to an agreement with the City for bus substitution in the near future.

The last company operating street cars in Queens is the New York and Queens County Railway Company. After an extensive investigation a report was made to the Board of Estimate recommending action which will result in the substitution of buses for their street car line. That will free Queensboro Bridge from all trolley operation and there will then be no trolleys operating in Queens County except a few extensions of the B.M.T. out of Brooklyn.

Proceedings to Review Tax Assessments

Our greatest unsolved problem is the 37,000 pending certiorari proceedings to review tax assessments. There has been some agitation about the alleged delay of the courts and the law department in disposing of them. This is not the fact except in isolated

cases. It is possible for any lawyer who really wants to try a certiorari case to bring it on more quickly than any other form of litigation. Undoubtedly there are individual cases of injustice in tax assessments, some of which have not yet been adjusted. When such are called to our attention the proceeding is immediately singled out and expedited. Unfortunately they are buried in and swamped by the thousands of cases solicited by ambulance chasing methods, never with any thought of being tried but solely for the purpose of harassing the City into a settlement. The City will not settle such cases unless we are convinced of the merits of the application for a reduction. What is sometimes overlooked is that the City owes nobody a settlement on the basis of the nuisance value of a suit. All any claimant is entitled to is a fair trial in a court of law.

Now it has been suggested that we should open the flood gates and try all of these cases just as quickly as possible. To prepare properly for trial in each case we must anticipate a cost to the City of about $1,000. a case. At that rate it would mean a disbursement of $35,000,000. just to dispose of these proceedings, knowing that the vast majority of them were commenced solely in the hope of collecting on nuisance value.

And even if we had the money to spend on such an enterprise it would not be physically possible to carry it through. Assuming the attorneys could be forced into action the courts would be swamped with tax cases to the exclusion of every other form of litigation and the members of the bar would be in an uproar. And then it must be remembered that the assessment rolls are the bed rock upon which the credit of the City rests.

What would the credit rating of the City be if real estate assessment valuations fluctuated as violently as the real estate market sometimes does? That would make it difficult to carry on our financial operations on any kind of a satisfactory basis and ultimately lead to a greater tax burden on the people because of high interest rates. We have consistently maintained in dealing with these cases that the charter means precisely what it says, i.e., that real property shall be assessed for what it will sell "under ordinary circumstances." These words do not mean the peak of a boom or the depth of a depression. Undoubtedly it is true that much real estate in the City was assessed during the past three years at prices for which it would have been difficult to find purchasers at the moment. Nevertheless, those assessments repre-

sented the real value of the property "under ordinary circumstances." After all, what a taxpayer is entitled to is not that his property shall be assessed at any particular percentage of its value, but that as to other taxpayers his burden is not an unequal one. In other words, if all property in the City of New York were assessed the same percentage of its value, whether that were over or under its actual value, whatever the tax burden was, taxpayers would be sharing it equally and equitably on the basis of the relative value of their holdings. What a taxpayer has a right to complain about is *inequality.*

In 1928, 607 certiorari proceedings were commenced. This rose to a peak in 1933 of 10,599 new proceedings commenced in that year following which there has been a slow, steady annual decline in the number of new proceedings begun. In 1936 it had fallen to 6,157 proceedings. Against this increasing flood of cases for the five years preceding 1934, settlements only averaged 494 a year. We increased that to 3,460 settlements in 1936. At the same time we cut the percentage of reduction from an average of 6.75% prior to 1934 to 0.77% in 1936. This gives a clear idea of the progress which has been made. In 1937 we expect definitely to reverse the tide and to dispose of more proceedings than are commenced during that year and then to start cutting in on the back-log of old proceedings.

This has been discussed at length because it is the one division of the office which still has a large volume of unfinished business. It is confronted with a physical problem which has at times seemed hopeless.

In the last report reference was made to the tri-departmental certiorari settlement board in process of formation, consisting of representatives of the Department of Taxes and Assessments and the Finance and Law Departments. That board has functioned smoothly through the year and made settlements in 60% of the proceedings heard.

Charter Revision and Codification

The members of the staff during the past year aided in the preparation of the new charter by reviewing and commenting on it. They also took an active part in the campaign for its adoption and helped to sustain in the courts the validity of its submission to the voters at the last general election.

The new charter is what a charter should be, i.e., a summary statement of the basic law of the City as related to the form or structure of its government and the distribution of its powers. The old charter was all that and, in addition, the accumulation of many years of legislative effort at detailed administration of the affairs of the City from Albany by specific and unrelated statutes.

To make the new charter effective, it must be supported by an administrative code and as a prelude to the preparation of that code it was found necessary to make a re-statement and consolidation of all the ordinances, local laws, statutes and court decisions affecting the City.

The Charter Commission started this work as a collateral activity and carried it on, in cooperation with the law department, simultaneously with its study of the form of the charter. Since that commission, under the terms of the statute, ceased to exist on the day the charter was voted on, it was necessary to provide some successor body which could proceed with the work of statutory consolidation and the preparation of the administrative code.

The charter goes into effect on January 1, 1938. All that time will be needed to complete the work of statutory consolidation and the preparation of the code.

The legislature by Chapter 483 of the Laws of 1936 created the Board of Statutory Consolidation, consisting of the Mayor, the Comptroller, the President of the Board of Aldermen and the Corporation Counsel, and directed it to take over the records of the staff then engaged in this work and to carry it to a conclusion. This means that a complete report and administrative code must be ready for presentation to the legislature at the very beginning of the session of 1938. That is the objective of the Board and we have the assurances of the staff that the report will be ready at that time. The work involves the reading and analysis of all statutes, ordinances and decisions from early Colonial days down to date and a re-statement of the live law, completely annotated. The physical size of the task is tremendous.

Starting with Coleman's cases of 1794, every volume of New York reported cases, as well as every volume of the Session Laws, was examined for rulings affecting the City's interest. A similar examination was made of the columns of the New York Law

Journal for the past 18 years, of the opinions of the Attorney General, of charters granted by Dutch and English colonial governments and of many other records and authorities. All decisions and statutes pertaining to New York City were noted and digested.

In the main, the legal staff was recruited from the graduating classes of law schools. Those were selected who had shown a certain aptitude or inclination for legal research and scholarship. Preference was given to the candidates holding membership on law review boards.

The work of codification has been aided by Federal cooperation, an appropriation of Federal funds for a project for lawyers and stenographers having been made available.

The report of this board will be of great help to the judges as well as to the officials of the City and the staff of the law department.

Litigation

Work in the Appellate Courts continues to show satisfactory results. This is due not only to careful preparation and adequate presentation, but also to a policy of not burdening Appellate Courts with appeals lacking substantial merit. In the Court of Appeals in the past year, 62 cases were argued, of which 43, or 69%, were decided in favor of the City. Of equal importance is the fact that practice before the Board of Standards and Appeals, which was in such unsatisfactory condition a few years ago, is now maintained on a high level. The authority and prestige of the Board has been restored. During the year 8 of the Board's rulings on variations of use were set aside by Justices at Special Term. Upon appeal to the Appellate Division all of these decisions were reversed and the rulings of the Board of Standards and Appeals reinstated.

The record shows also that in Civil Service cases employees are being treated with fairness, and no dismissals are being made except for adequate cause. Nineteen proceedings were brought to review dismissals and in each one of them the Commissioners' action was upheld by the Appellate Court.

The record in the trial courts is equally satisfactory. In the past year 1,409 negligence cases were tried and by motions to

dismiss, discontinuance and settlements, 5,256 negligence suits and claims were disposed of. All of these figures are new high records for the department.

In the three years, 1934 to 1936, 4,165 negligence cases were tried, which is equivalent to the work of the 12 years prior to 1934. At the same time the City's defense against such actions was improved. In the ten-year period from 1924 to 1933 the average recovery per case tried was $3,190. If this average had prevailed through 1934 to 1936, the 4,165 cases tried would have cost $13,286,350. In fact, they cost $2,876,574.

When negligence suits and claims dismissed for lack of prosecution are included, the figures are even more impressive. In the past three years we have disposed of negligence suits and claims aggregating $80,158,332., for just about 2% of the amount sued for. The record for the last quarter of 1936 was 1.6%, the lowest in the history of the department. These figures constitute a complete refutation of the argument that the City should carry liability insurance and discontinue its policy of self-insurance.

This department has renewed its efforts, in cooperation with the heads of other City departments, to reduce the accidents caused by the City's activities to the public and to City employees. The results have been interesting and encouraging. Definite safety campaigns are under way in many departments which are reducing the injuries caused by the City's motor vehicles and other equipment. The modern idea is that few accidents are due to hazards necessarily inherent in employment. Most accidents are preventable and money spent for prevention is a good investment by the City. Incidentally, adequate preventive measures are an essential feature of a sound workmen's compensation policy.

Turning to contract cases against the City, which used to be one of the happy hunting grounds, the figures tell a similar story. In the three years ending December 31, 1936, we disposed of 438 cases by trial, not including those dismissed for lack of prosecution. This is equivalent to the work of the 15 years next preceding 1934. In 1934 to 1936 a total of contract claims and suits were disposed of by trial, motions to dismiss and otherwise, aggregating $19,931,096. at a total recovery cost of $905,182. or 4.6%. Similar claims in the next preceding three years, 1931 to

1933, aggregated $12,584,340. which were disposed of at a recovery cost of $3,284,764. or 26%.

Civil Service Litigation

A subject which causes concern is the increase in Civil Service litigation. Probably no other employer is sued by as many of its employees as the City of New York.

The condition described has been rendered more acute by the economies which the City has been forced to adopt in recent years. Employees whose positions were abolished took their places on preferred lists and removals from service were made in accordance with the reverse order of appointment. The principle is simple, but its application is complicated.

When a department head finds two parties claiming the right to one position he frequently cannot safely decide in favor of either. The case will go to court with one or two appeals, and if an appointment be made and the wrong man selected, the successful claimant will recover back pay, with double cost to the City. Such suits interfere with efficient administration both directly and indirectly through the ill-feeling caused by conflicting claims to one position. Numerous similar cases have arisen because of the expiration or extension of eligible lists.

The litigation just referred to is of special importance to the Board of Education because of the great size of the staff and the numbers of teachers in separate groups or classifications. Any change in rules, rights or privileges made as a result of a Court decision or a new statute affects scores, hundreds, and in some instances thousands of persons, causing serious administrative problems. The record of the past year indicates that the Board of Education is conforming to the policies of the Commissioner of Education and that there is no lack of harmony between these two authorities. Of 30 appeals taken to the Commissioner of Education from rulings of the Board we were successful in obtaining an affirmance in 29 cases.

Water Supply

Following the action of the Board of Estimate and Apportionment on June 5, 1936, authorizing an issue of corporate stock for construction work upon the Delaware water supply project,

six separate condemnation proceedings in five counties were begun, necessitating the appointment of several condemnation commissions. By December 1, 1936, we had acquired title for the City to the new line from Lackawack dam-site in Ulster County to the Hill View reservoir in Yonkers. All of the commissions have been organized and hearings of claims were beginning as the year closed.

As in other divisions, efforts have been made to reduce the cases and matters pending upon the calendars both by trial and settlement. We were successful in reducing the number of untried certiorari cases from 300 to 210, and by settlements with various cities, towns and townships will dispose of over 100 more untried proceedings within a few months. The proposed settlements will result in the refunding to the City of approximately $100,000. in excess payments and yield an annual saving of $30,000. in taxes.

Transit Unification

We continued during the past year to assist Hon. Samuel Seabury and Chamberlain A. A. Berle, Jr., in the development and completion of the transit unification program. At the request of the Transit Commission, the City staff prepared a definitive plan and unification agreement embodying in detail the understandings broadly negotiated in 1934 and 1935. All parties to the negotiations signified their adherence to the definitive plan. It was presented to the Transit Commission on June 22, 1936.

On September 10, 1936, the Transit Commission initiated its statutory hearings upon the definitive plan presented to it by the City negotiators. From September through November 19, sixteen hearings were held. Hearings were adjourned on Nevember 19, subject to the call of the chair.

The small staff organized to assist Judge Seabury and Chamberlain Berle was continued during the year. As heretofore, one Assistant Corporation Counsel, William G. Mulligan, Jr., was assigned from the Franchise Division to cooperate with the staff in the unification work and represent the Corporation Counsel in the Interborough-Manhattan receiverships in the Federal Court, and other litigated aspects.

Authorities

Throughout the year our work continued as general counsel for Triborough Bridge Authority, Marine Parkway Authority, New York City Tunnel Authority, New York City Housing Authority, and also in connection with the World's Fair, the Shore Drive in the Fort Hamilton district, the East River Drive and the West Side Improvement. Substantial progress was made in all these projects.

The New York City Tunnel Authority (see report of Admiralty division) required special consideration because of the short time available and the necessity of obtaining funds from the Federal Government without delay.

The scope of the work of the Tunnel Authority has been increased in the past year by legislation authorizing the construction of the Brooklyn-Battery Tunnel. A detailed engineering report has been completed and transmitted to the Board of Estimate and the project is now ready for development awaiting only the necessary financing.

The site for the World's Fair was another matter which required speedy action. The Board of Estimate authorized acquisition of the property on May 1st; title was vested May 15th, and the trial was concluded and awards made December 19th. The only legal matter still pending involves the title of 80 acres, the condemnation of which was authorized subsequently.

Changes in Personnel

Members of the staff who after rendering loyal and efficient service to the department severed their connection during the year for other fields of work were:

Matthew J. Troy, who resigned April 12, 1936, to accept an appointment as a City Magistrate.

Sherman S. Rogers, who on April 15, 1936 was appointed General Counsel to Trustees of Series C2 New York Title and Mortgage Company Guaranteed Certificates.

Paul Kern, who resigned July 31, 1936 to accept an appointment as a member of the Municipal Civil Service Commission.

Thomas E. Stephens, who resigned September 21, 1936 to enter private practice with the firm of Lord, Day & Lord

John M. Gaston, Jr., who resigned November 7, 1936 to enter private practice as a member of the legal department of Allied Chemical Company.

Bernard Phillips, who resigned December 31, 1936, to enter private practice with the firm of Scandrett, Tuttle & Chalaire.

All of the men named above had records of fine achievement in the law department and their departure is regretted.

During the year two members of the staff were honored by appointment as Thirty-day Magistrates, J. G. L. Molloy, who served from January 1, 1937 to January 30, 1937, and Alvin McKinley Sylvester, who served from February 1, 1937 to March 2, 1937.

Annexed hereto is a list of appointments as Assistant Corporation Counsel made during the year, together with a brief statement of the educational and professional background of each appointee.

REPORTS OF DIVISIONS

ADMIRALTY—P. F. Shortridge, Assistant in Charge.

The work of the Admiralty Division, which includes actions, proceedings, claims and other matters involving municipally owned floating equipment, reflects the marine activity of the City. During the past year the division has progressed with its work sufficiently to permit it to undertake work outside its own field.

It has handled all the legal work for the New York City Tunnel Authority from its creation by Chapter 1 of the Laws of 1936 to date. This involves supervision of the organization of the Authority, attendance at meetings of the board and advice and opinions concerning all matters of organization, motions and trials relating to Civil Service questions, preparation of construction contracts, negotiation and advice with respect to Federal loans and all questions concerning the acquisition of real estate whether by condemnation proceedings or negotiation. This is a $58,000,000 project and the work in which it is engaged is of a very intricate nature.

The Authority, the City and the Federal Government, which is supplying the funds partly by grant and largely by loan, are proceeding as expeditiously as possible to complete the tunnel because of its needed relief to vehicular transportation and also as an aid to unemployment relief. The Tunnel Authority is also investigating the advisability of an additional vehicular tunnel from the Battery in Manhattan to Hamilton Avenue, Brooklyn, and contracts in connection with this work have been prepared.

This division is also giving assistance to the Division of General Litigation in various actions and special proceedings including mandamus proceedings by Civil Service employees, injunction proceedings affecting the Police Department, motions involving the Board of Elections and miscellaneous matters.

APPEALS—Paxton Blair, Assistant in Charge.

All appeals are supervised by this division and 60% of the appeals are argued by its members.

Under the direction of this division 497 briefs on appeal were prepared and filed during 1936. Of 416 appeals argued during the year 267 or 64.2% terminated successfully.

In appeals taken to the Court of Appeals by the City, reversals were secured in 11 cases, affirmances in 12. In appeals taken to the Court of Appeals by our opponents, reversals were secured in 7 cases, affirmances in 32. Our adversaries asked for leave to go to the Court of Appeals in 16 cases. Permission was granted in 4 of them. We have asked for leave to go to the Court of Appeals in 10 cases. Permission was granted in 7 of them.

The high ratio of success of the division in sustaining the authority of the Board of Standards and Appeals which began in 1935 was maintained throughout 1936. In eight cases where applications to that board for variations of the use district regulations were denied the action of the Board was approved by the appellate court. Six of the 8 victories involved the reversal of the Special Term.

There were 19 certiorari proceedings to review the dismissal of employees all of which were won. This indicates, among other things, that department heads have been careful in bringing

charges against employees and that both the trials and appeals were competently conducted.

Out of 4 appeals in paternity cases (orders of filiation), the orders in all were sustained.

During the year the number of old appeals pending upon our calendars was reduced substantially. Motions to dismiss such appeals for lack of prosecution were granted or stipulations to that end executed, to the number of 197. These efforts will be continued until these calendars contain only current or live appeals.

Among the important appeals argued in 1936 are the following:

Matter of New York City Housing Authority v. *Muller*, 270 N. Y. 333. The Court of Appeals upheld the constitutionality of the statute under which the New York City Housing Authority was organized and declared that the power of eminent domain could be used for the purpose of clearing slum areas and erecting thereon sanitary housing accommodations for persons of low income.

Matter of Moran v. *LaGuardia*, 270 N.Y. 450. The Court of Appeals held that the economy acts were continued in force and that a concurrent resolution of the Legislature was ineffecive to terminate them.

Commissioner of Public Welfare v. *Simon*, 270 N. Y. 188. The Court of Appeals held that the statute of limitations for the institution of paternity proceedings did not run until the child had reached the age of 16, reversing a determination that the statutory period expired two years from the birth of the child. This decision has operated to prevent widespread hardship where the unmarried mothers had delayed making applications for relief to the Department of Public Welfare.

Matter of City of New York (*City Hall Place*), 271 N. Y. 199. The Court of Appeals by reinstating certain street closing proceedings, which had been dismissed by the trial court, has permitted the City to clear title to the site on which the new Federal Court House has been erected.

Matter of Boardwalk Amusement Company, 271 N.Y. 341. The Court of Appeals has clarified the duties of the City of New York upon the discontinuance of condemnation proceedings.

Matter of Towers Management Corp. v. *Thatcher,* 271 N. Y. 94. The Court of Appeals held that permission to erect an electric sign on the roof of an hotel in a residential district could not be secured by a mandamus directed against the Commissioner of Buildings but only by application to the Board of Standards and Appeals.

Matter of Emigrant Industrial Savings Bank, 248 App. Div. 155. The Appellate Division, First Department, reversed an order of reference in a building zone certiorari thereby preventing the rise in the First Department of the practice of appointing referees which has grown up in the Second Department and which has added greatly to the expense of reviewing determinations of the Board of Standards and Appeals.

In re Leavy, 85 F. (2d) 25. The Circuit Court of Appeals held that the City of New York could collect a sales tax calculated upon the proceeds of a liquidation sale conducted by a federal trustee in bankruptcy.

Southern Boulevard Railroad Company v. *City of New York,* 86 F. (2d) 633. The Circuit Court of Appeals upheld the public utility gross receipts emergency tax against a contention that it violated the Fourteenth Amendment as well as the Contracts Clause of the Federal Constitution.

Matter of Atlas Television Company, Inc., 273 N. Y. 51. The Court of Appeals, reversing the Appellate Division, First Department, held that when a vendor had made a general assignment for the benefit of creditors, the City was a preferred creditor to the amount of sales taxes which had been, or should have been, collected by the vendor from persons making purchases prior to insolvency. As a result of this decision, the Supreme Court of the United States, early in the year 1937, reversed the decision of the Circuit Court of Appeals in *In re Lazaroff,* 84 F. (2d) 982, which had reached an opposite result in a case arising under the National Bankruptcy Act.

Marba Sea Bay Corporation v. *Clinton Street Realty Corporation and the City of New York,* 272 N. Y. 292. The Court of Appeals held that the Governor Dongan Patent to John Palmer issued in 1685 was void in so far as it purported

to make a grant of the foreshore of what is now Queens County to a private individual for private purposes. The City is thus in a position to assert title to a large number of parcels of real estate located between the north line of the Rockaway boardwalk and the high water mark along the shore in that locality. This is the first decision made by the Court of Appeals establishing the partial invalidity of the 1685 patent and is far-reaching in its consequences.

DIVISION OF CLAIMS AND JUDGMENTS—Harold N. Whitehouse, Assistant in Charge.

The progress during 1936 in the disposal of cases in arrears has made possible a long contemplated reorganization. The Division of Affirmative Actions was abolished and a Division of Claims and Judgments created.

It has charge of affirmative claims in the City and Municipal Courts; the collection of judgments obtained by the City; the civil prosecution in all courts of claims arising under the Public Welfare Law and the Child Welfare Act; and the prosecution of proceedings in the Surrogate's Courts for the collection of legacies and bequests made to the City and various city institutions under decedents' wills.

Pending Supreme Court cases and claims, other than welfare, involving substantial amounts formerly assigned to the Division of Affirmative Actions were reassigned to the various appropriate divisions. Assistants were reassigned to divisions where they could be more generally useful. Reorganization was completed by September 1, 1936.

The object of limiting the division to small cases is so to systematize collection work as to make possible a profitable return on the thousands of little claims for property damage, rent, repairs, etc., coming to this division.

In the few months since the reorganization the new system has justified itself. The division will be able to dispose of upwards of fifteen hundred claims annually in an efficient manner without any substantial increase in its staff. Most of the claims, except welfare, are for less than $200.00 so that the cost of administration

must be reduced to a minimum. To that end, the work has been formalized as far as possible and its processes simplified.

Prior to the reorganization of the division important matters were disposed of. Mr. Bryan was Assistant in Charge from January 1st until April 15th. Mr. Bright was Assistant in Charge from that time until the completion of the reorganization. The following matters disposed of by the division are of interest:

City of New York v. *Hearst.*—On November 4, 1902 large numbers of persons were injured and others killed in a fire works explosion in Madison Square. The explosion was caused by the bursting of a mortar during a fire works exhibition held under the auspices of the National Association of Democratic Clubs, of which Mr. Hearst was president. Between 1902 and 1905 eighty-one actions were commenced against the City to recover damages for the injury or death of persons injured or killed by the explosion. Vouching in notices were served upon Mr. Hearst in these actions. Judgments were obtained against the City amounting to $53,099.31, and $66,305.75 was paid by the City to settle other cases. Six actions against Mr. Hearst were brought by the City. One was tried, and in 1917 a judgment against Mr. Hearst was affirmed by the Court of Appeals. Nothing, however, was done in the other five actions, with the exception of abortive negotiations for settlement, which terminated in 1921. In 1934 this division resurrected these buried cases and negotiations were entered into with Mr. Hearst's attorneys for the settlement of the entire controversy. They were concluded in the past year and a payment of $30,000 was received from him which was approximately the face amount recoverable from Mr. Hearst in the event of success upon a trial. The lapse of twenty-five years had made it impossible for the City to establish the full amount of its damage and its failure to press the claims made it unfair to ask for interest.

City of New York v. *Bridge Operating Company.*—Information came to the division that the sum of $11,306.02 was on deposit in the Central Hanover Bank & Trust Company to the credit of the Bridge Operating Company, a holding company for various street railroads, some of which operated over the Williamsburgh Bridge. The City had obtained a judgment against the Bridge Operating Company for $10,657.51 on March 6, 1929.

which was unpaid. Supplementary proceedings were instituted, which resulted in the collection of $9,109.46, the balance of the deposit being claimed by the State of New York for unpaid franchise taxes.

City of New York v. *Charles Buckley.*—The sum of $25,800.00 had been deposited in an action of interpleader with former Chamberlain Buckley who had invested this sum in an undivided share of a mortgage. When the depositing claimants demanded their money of the present Chamberlain, the mortgage was in default. Thereupon the claimants recovered judgment against the City for the amount deposited. The City then sued the sureties on the bond of former Chamberlain Buckley to reimburse it for its loss. In an extensive opinion Mr. Justice Hammer upheld the theory of the City that the order under which these funds were deposited did not permit an investment, but dismissed the complaint upon the theory that former Chamberlain Buckley had not made an investment of these monies but had merely held the mortgage as part of his general portfolio of investments. The Court, therefore, absolved the sureties upon this Chamberlain's bond from liability. An appeal from this judgment has been taken to the Appellate Division.

Fire Department Relief Fund v. *U. S. Fidelity & Guaranty Co.* —The Fire Department Relief Fund suffered a loss in excess of $100,000.00 upon the failure of the Harriman National Bank & Trust Company in March, 1933. Its deposits in that institution were covered by a bond of the U. S. Fidelity & Guaranty Co. Negotiations with this surety resulted in the payment of $100,000.00, the face amount of the bond, to the Relief Fund, thus cutting down its loss by that sum.

In the prosecution of public welfare claims this division collected more than $30,000 and was active in establishing more firmly the principles of law pertaining to this relatively new field of litigation.

Hodson v. *Stapleton,* 248 App. Div. 524, 290 N. Y. Supp. 570, decided October 30, 1936, Appellate Division, First Department, involved a claim against a wife for old age assistance granted to her husband from September 1, 1931 to July 1, 1935 in the sum of $2,025. On January 12, 1935, the wife's uncle died leaving a will under which the defendant became entitled to a

legacy of over $29,000. The City sued the wife under Sections 125 and 128 of the Public Welfare Law to recover the amount of relief received by the husband. The court held the wife responsible for relief received by the husband after she came into funds and thus became financially able to support him.

Matter of Ciappei, 159 Misc., 438, 287 N. Y. Supp. 988, decided by Surrogate Foley, Surrogate's Court, New York County, April 2, 1936, held that life insurance payable to an estate is subject to the City's claim for old age assistance given to decedent during his lifetime. The City's rights were preferred over other creditors of the estate.

Matter of Trent, 159 Misc. 822, 288 N. Y. Supp. 928, was decided by Surrogate Henderson, Surrogate's Court, Bronx County, June 17, 1936. The decedent had received old age assistance from the City. He later became entitled to a legacy under a will but died before the legacy was paid. After his death his executor received the legacy and the City instituted proceeding for the payment of its claim. The Surrogate held that the legacy, although unpaid at the time of the decedent's death, constituted "property" within the meaning of Section 128 of the Public Welfare Law against which the City's claim could be asserted.

Hodson v. *Miller* was tried before a Court and jury in the Municipal Court on November 22, 1936. Defendant was the daughter of a recipient of old age assistance from January 1, 1931 to October 1, 1934 in the sum of $704. On February 1, 1934, defendant's mother, wife of the recipient, died leaving an estate of more than $14,000 in savings bank accounts. The defendant was named as principal beneficiary under the mother's will and transferred the proceeds of the bank accounts to bank accounts of her own. Demand was made upon her to reimburse the City for the amount of relief received by her father and upon her refusal suit was instituted. At the trial the foregoing facts were proved and also that the defendant closed out all her bank accounts the day she was served with the summons. The jury returned a verdict in favor of the City for the full amount.

CONTRACTS—Alvin McK. Sylvester, Assistant in Charge.

The completion of its third year gives this division a substantial basis for a comparison of its work with that performed during previous years. During the years 1934 to 1936 this division tried or otherwise disposed of 662 cases as against 263 cases similarly terminated during the years 1931 to 1933. This constitutes an increase of 251% in the number of cases eliminated from the trial calendars. The monetary saving to the taxpayers is even more striking. In tabulated form the results are:

Year	Actions	Amount Claimed	Amount Recovered
1931	24	$976,461	$460,590
1932	114	3,144,029	668,254
1933	125	8,463,850	2,155,920
Total 1931-3	263	$12,584,340	$3,284,764
1934	346	2,838,120	133,886
1935	148	14,456,646	553,822
1936	168	2,636,330	217,474
Total 1934-6	662	$19,931,096	$905,182

These figures show that in the three years that this administration has held office, it has cost the City of New York $905,182 to dispose of claims totalling $19,931,096, whereas in the previous three years it cost $3,284,764 to dispose of claims totalling $12,584,340. In other words, from 1934 to 1936 persons suing the city have recovered 5 cents on the dollar on the amount sued for, whereas during the previous three years the recoveries were 26 cents on the dollar.

This division successfully concluded its campaign to dispose of old cases. Some were settled, but only after the plaintiffs were convinced that the City was actually ready to present its defense. The settlements obtained illustrate the effectiveness of our preparation for trial. For example, in *Bates Company* v *City,* arising out of a contract made in 1919 for the construction of the Manhattan Central Fire Alarm System, the plaintiff claimed that its contract had been wrongfully declared abandoned and asserted a claim of $146,755.25 for extra work and delay. The case was settled by payment of $2,000.00. Similarly, *Lester* v *City,* in which the plaintiff sought to recover $67,244.80, was discontinued upon payment of $2,750.00.

The division succeeded in having the law amended to require litigants in contract actions against the Board of Education and the Board of Higher Education, to file their claims with these Boards and to wait thirty days thereafter before bringing suit. The amendment also requires claimants to submit their claims, upon request, to examination by the Boards or their authorized representatives (L. 1936, ch. 767 and 769).

It is hoped that these provisions will enable this office more adequately to protect the Boards against improper or excessive claims.

Among the important cases disposed of by the division in 1936 were the following:

Edward V. McGovern v. *City of New York.* This was an action for $290,730.80 brought by the plumbing contractor for Rikers Island Penitentiary for alleged wrongful termination of his contract. The claim was for work performed and not paid for, for extra work and loss of profits. The contract required an action to be brought within six months. The claim was filed with the Comptroller three days before the six months elapsed and two days later the summons was served. The dismissal of the complaint by Mr. Justice Rosenman (160 Misc. 714) was discussed in last year's report. During the current year, the Appellate Division (247 App. Div. 775), and the Court of Appeals (272 N. Y. 455) sustained Justice Rosenman's decision. Thereupon the plaintiff, claiming to come within the saving provisions of Section 23 of the Civil Practice Act, commenced a new suit. The City again moved for a dismissal, arguing that the first action was not commenced "within the time limited therefor," as required by Section 23. This claim was upheld by Mr. Justice Hofstadter who dismissed the complaint.

Irving Trust Company, as Trustee in Bankruptcy of E. O. Roberts Company v. *City of New York.* This was an action to recover a balance claimed to be due for work on the foundation for the Health, Hospitals and Sanitation Building at Worth Street. The main claim was for $42,636.32, the cost of removing an old foundation which the plaintiff found at the site. The City had employed a drilling company to furnish it with certain borings. The claim was that these borings were false in that they omitted to show the location of a solid concrete and steel mat foundation

covering a substantial portion of the site. The contract stated that the boring data was furnished to the contractor for whatever value it might have. The Court held that the plaintiff could not recover, since it failed to prove knowledge on the part of the City or its representatives as to the falsity of the borings.

A. D'Angelo & Sons, Inc. v. *The City.* This case arose out of a contract for the construction of Pelham Parkway, South, Bronx. While the work was in progress, the fill placed by plaintiff settled, so that a mud wave was created, said to have been 15 feet high, over an area of 60,000 square feet, raising the tracks of the adjoining railroad, and requiring plaintiff to put 91,184 cubic yards of additional fill into the roadbed. The plaintiff sued for $54,710.40, charging that the City misrepresented the condition of the soil and concealed material information from plaintiff. After a trial, Mr. Justice Wasservogel found that these charges were not sustained and judgment was rendered in favor of the City.

Silas Mason v. *City of New York.* This action arose out of a subway contract and represented the amount certified for final payment by the Board of Transportation, from which the Comptroller had deducted $21,000.00. The question was whether the work should be classified as shaft or tunnel excavation. After a trial, Mr. Justice Steuer ruled in favor of the City and held that it should be classified as tunnel excavation.

Joseph F. Goodrich v. *City.* This was an action for $42,000.00 arising out of a contract for the installation of electrical equipment in Kings County Hospital. The answer contained the affirmative defense of general release. Upon our motion the issue of general release was tried first before Mr. Justice McGoldrick and a jury, and resulted in a directed verdict for the City. Therefore the trial of the main action became unnecessary. This procedure will be followed whenever the City has a general release. It shortens and simplifies trials and prevents the introduction of evidence which is likely to distract attention from the true issue.

T. J. W. Corporation v. *The Board of Higher Education.* The plaintiff sought to recover $4,880.00 representing the balance due for extra work claimed to have been required by reason of an error in the grade elevation shown on plans for the

construction of a unit of Hunter College. Payment of $13,794.00 had been made to the plaintiff because of this grade elevation error before suit was started. The contract provided that any data on the plans as to the elevation of the existing grades was approximate only and not guaranteed. This provision was pleaded as a defense and also in support of a counterclaim for the $13,794.00 previously paid. At the trial the Court dismissed the complaint and directed a verdict in favor of the defendants for the full amount of the counterclaim upon the ground that this payment to plaintiff was unauthorized and a gratuity to him. (State Constitution Art. III, §28.)

J. C. Berkwit & Co., Inc. v *The City.* Adolph Weiss, a TERA worker assigned to the Department of Parks as Superintendent of General Construction, leased to the TERA welding equipment which he owned or controlled, to be used on TERA projects on which he was Supervisor. Berkwit & Co. took an assignment from Weiss of the amount claimed. Judgment was directed for the plaintiff but reversed upon appeal to the Appellate Term. The Court said that under common law principles, Weiss was barred from entering into contractual relations with the TERA, of which the defendant, the City of New York, forms a part. Leave to appeal was denied by the Appellate Term and Appellate Division.

FRANCHISES—Joseph L. Weiner, Assistant in Charge.

The division can now report that it has disposed of or carried through the trial stage every matter referred to it prior to January 1, 1934. The significance of the statement is indicated by the dates when many important matters were referred to this department as shown below and in the annual reports for 1934 and 1935:

1. *Eighth and Ninth Avenues Railway Company.*—The controversies between the City and this company were almost two decades old. One phase reached the litigation stage in 1927.

2. *Transformer Vaults.*—The legality of the construction of transformer vaults and the installation of transformers in the City streets by electric corporations had been referred to the division on a number of occasions, at least as early as 1926.

3. *New York Railways Paving Claims.*—These claims in favor of the City accrued between 1919 and 1925. Several unsuccessful attempts were made to recover and apparently all further effort was abandoned in 1929.

4. *Relocation of Boston Road Columns.*—This matter had been a subject of controversy since 1910.

5. *Relocation of Long Island Pillars at Atlantic and Fifth Avenues, Brooklyn.*—This matter had been the subject of controversy since the erection of the pillars in 1905.

6. *Maintenance of Sunnyside Yard Bridges.*—These bridges were constructed by the Long Island and the Pennsylvania Railroads and were completed in 1911. Since that time controversy had continued with respect to their maintenance.

7. *Manhattan and Queens Traction Corporation.*—Litigation with this company had been pending since 1916.

8. *Electric Light Franchise in Brooklyn.*—Suit to restrain the City from taking any action looking toward forfeiture of an electric light franchise in the Borough of Brooklyn was commenced in 1913. Judgment against the City was entered in 1917. In 1921 a record on appeal was filed, but no further action had been taken.

9. *Removal of Kiosks, Fourth Avenue, Brooklyn.*—These kiosks, part of the Fourth Avenue subway, were removed in 1928. Several utility corporations refused to accommodate their structures to the improvement of the highway, and the City was forced to make these changes at its own expense. These claims were discovered in 1934 and actions commenced barely in time to avoid the bar of the Statute of Limitations.

The work of the division for the year is best indicated under appropriate subject headings.

Buses.—In last year's report it was predicted that this year would see the accomplishment of the entire motorization program for the Borough of Manhattan. This prediction has been fulfilled. The Third Avenue System is the only street car system now operating in the Borough of Manhattan.

Substitution of buses for street cars in the Borough of Queens has progressed as follows:

Last year's report referred to the agreement to settle existing controversies with Manhattan and Queens Traction Corporation, and stated that one of the results would be the improvement of Queens Boulevard. The settlement agreement has now been carried out, including recognition by the Corporation of the invalidity of its street-car franchise and the payment to the City of $343,000. A bus franchise has been granted and bus operation is expected to be commenced some time in March, after which the present street car tracks will be removed.

An action was commenced to invalidate certain franchises owned by New York and Queens Transit Corporation. The corporation has made a proposal to motorize its lines, and a public hearing has been held upon the petition therefor. Undoubtedly the commencement of this suit was a material factor in bringing about this proposal. The proposal has been accepted, and the motorization of the three street car routes will result.

The investigation into the New York and Queens County Railway Company was completed, and the results were reported to the Mayor, who submitted it to the Board of Estimate without recommendations. The so-called "Steinway Lines" operated by that company have been in receivership in the State courts since 1922. When the matter appeared on the Board of Estimate calendar, representatives of the Company stated that they desired to submit a proposal for substitution of buses. It is anticipated that such substitution will be accomplished during 1937, which will remove all street cars from Queensborough Bridge, provide two additional traffic lanes, and relieve traffic congestion on Queensborough Plaza.

With respect to integrated bus operation in Queens under appropriate franchise contracts, the following developments have taken place:

The mandamus order issued by the Appellate Division, Second Department, directing the Mayor and the Police Commissioner to remove all unfranchised buses operated in the Borough of Queens (Walsh v. LaGuardia) was reversed by the Court of Appeals in January. The reversal established the principle that the courts should be cautious in interfering with the executive

discretion of elected City officials, and had the immediate effect of removing the fear that bus operation in Queens would have to stop. A short time thereafter, a taxpayer sought to restrain such operation (Downs v. LaGuardia, et al.). The motion for a temporary injunction was denied, and the suit discontinued. This cleared the legal stage enabling the City to continue with the four-zone program for bus franchises, drafted by a committee of which the Corporation Counsel was a member. Franchise contracts have been awarded for three of the zones. At present writing an attempt is being made to invalidate these contracts (Walsh v. LaGuardia, et al.) ; a motion for a temporary injunction was denied.

The right to operate additional bus routes in the Borough of Richmond was granted to Staten Island Coach Company, Inc., including four routes illegally operated by Tompkins Bus Corporation. A taxpayer's action to enjoin the exercise of the new franchise is now pending (Marguerite Gordon v. LaGuardia, et al.) ; a motion for a temporary injunction was denied.

The report of last year referred to Clark v. LaGuardia, in which the lower courts have held that the City is without power to operate municipal buses. However, leave to appeal to the Court of Appeals has been granted.

Electric Light and Power.—Developments of major importance under this heading have taken place. In July, the action of the Public Service Commission in fixing temporary electric rates for Bronx Gas and Electric Company, pursuant to the new statute enacted in 1934 (P. S. L., §114), was upheld by the Court of Appeals. Because of the importance of this suit we filed a brief on behalf of the City. As a result of the decision of the Court of Appeals, the customers obtained refunds of the excess amount collected.

The application for merger of The New York Edison Company into the Consolidated Edison Company (formerly Consolidated Gas Company) aroused considerable public attention. The position of the City was that (a) the gas business and the electric business should be kept separate, and (b) mergers should not be authorized unless the capitalization of the companies is reduced so as to eliminate the water now found there, and unless the mergers are accompanied by definite programs for rate reduc-

tions under a Washington or similar plan. We regard the granting by the Public Service Commission of its consent to this merger as a violation of these principles.

Last year's report predicted that as a result of the decision by the Court of Appeals denying Brooklyn Edison Company, Inc., the right to install transformers in streets, the City would regain control over the bed of its streets and would collect approximately $500,000 annually. This prediction has been fulfilled. As a result of conferences with representatives of the companies, the latter applied for and received consents for the maintenance of sidewalk transformers, as well as transformers located in the roadways and are paying appropriate compensation therefor.

Telephone.—The proceedings with reference to the New York Telephone Company before the Commission were closed in July, 1936. The Commission ordered certain reductions, the most substantial of which had to do with toll rates for distances up to 40 miles, effective August 1, 1936.

Gas.—Hearings on rates of Kings County Lighting Company and Brooklyn Borough Gas Company were concluded this year and briefs filed. In the Kings County proceeding, the record comprises more than 10,000 pages of testimony and 295 separate exhibits. In the Brooklyn Borough proceeding, the record likewise comprises over 10,000 pages of testimony and 494 separate exhibits. The cases are now under consideration by the Public Service Commission. The hearings with reference to the Brooklyn Union Gas Company were continued.

Railroads.—The past year has seen the completion of two proceedings relating to rates of the Long Island Railroad Company. Hearings upon the application for increases in commutation rates were concluded and a decision rendered denying the increases. The second proceeding was started by the Transit Commission to compel the Long Island Railroad to charge no more than two cents a mile for one-way passengers within the City of New York. This proceeding was carried through successfully to the Court of Appeals. The City participated actively in both proceedings, its representatives presenting affirmative proof and conducting most of the cross-examination of the Company's witnesses in the commutation proceeding. These cases show that it is not

necessary for public utility proceedings to drag indefinitely. Hearings were commenced in October, 1935, concluded in May, 1936, with a decision in July, 1936.

Last year we reported a decree against New York Railways Company awarding the City $305,000 for ancient paving claims. The company appealed to the Circuit Court of Appeals and the City cross-appealed because some of its claims were disallowed. The Circuit Court decided in favor of the City, with the result that the judgment was increased. A petition for a writ of certiorari was denied by the United States Supreme Court, and the judgment was then paid, amounting to $349,421.97.

There has been considerable activity with respect to carrying streets over railroads, relocation of railroad columns in streets, and the like. In one of these the City was unsuccessful. The Board of Estimate and Apportionment adopted a resolution for the construction of a footbridge across the tracks of the New York Rapid Transit Corporation at East 103rd Street, Brooklyn.

The resolution was annulled by the courts. The Board of Estimate and Apportionment has been advised that the object can be accomplished under a proper form of resolution, which is now under consideration. All of the other matters have been concluded successfully without litigation and need not be mentioned further, with the exception of the carrying of 13th Avenue, Brooklyn, across the tracks of the New York Rapid Transit Corporation and the Long Island Railroad. The latter claimed that it was under no duty to do so until the City paid it for land which would be occupied by the structure. A mandamus proceeding was commenced, but withdrawn upon the agreement of the Long Island Railroad to do the work.

Early in the year, a proceeding was commenced to compel the Long Island Railroad to maintain both the structures and the roadways of the bridges over Sunnyside Yard in the Borough of Queens. These bridges were built under an agreement authorized by the Board of Estimate in 1907. After the structures were completed, a deed was given by the railroad to the City, which provided, in effect, that the structures were to be maintained by the City at its expense. We claimed that such a provision was not binding upon the City, and were upheld in part in the lower court. Both parties appealed to the Appellate Division with

the result that the order was modified to require the railroad to maintain the roadway of one of the bridges in addition to the framework and abutments of all of the bridges the City being required to maintain the other roadways. Cross-appeals to the Court of Appeals resulted in the affirmance, by a divided Court, of the order of the Appellate Division, 272 N. Y. 658.

Water.—A development of importance to the City is the effort of the Public Service Commission to regulate the amount to be paid by the City to two private water companies. The Commission was upheld at Special Term, Albany County, and by the Appellate Division, Third Department. Applications for leave to appeal to the Court of Appeals have been granted.

It has also been claimed that the jurisdiction of the Public Service Commission extends to the character of services to be furnished and accordingly, New York Water Service Corporation has refused to obey an order of the Commissioner of Water Supply, Gas and Electricity. A mandamus order against the company was procured at Special Term, Queens County, which was reversed by the Appellate Division, Second Department. An appeal to the Court of Appeals is now pending.

Miscellaneous.—Members of the division participated in a number of matters not within our regular field. Most important of these were the cases involving the constitutionality of the proposed new charter and proportional representation in the election of councilmen. (Mooney v. Cohen, et al. and Mulville v. Cohen, et al.).

GENERAL LITIGATION—Russell Lord Tarbox, Assistant in Charge.

The work of this division continues to grow both in volume and scope. During the past year the number of PWA projects, whose legal problems come to this department increased to 80 involving an estimated cost of $142,881,396. In addition, 41 similar projects with an estimated cost of $46,514,150. have been tentatively approved and await the appropriation by Congress of funds necessary to put them into effect. Again in addition, 21 projects with an estimated cost of $62,370,610, have been applied for and await action by the PWA.

During the past year, the equivalent of the full time of several assistants has been devoted to legal work of Authorities which are a development of recent years, such as, The New York City Tunnel Authority, New York City Housing Authority, Triborough Bridge Authority, Henry Hudson Authority, and The World's Fair. These new matters, superimposed upon the normal work of the division, exposed more clearly our lack of a civil service staff of law assistants and clerks to assist trial attorneys. We have one law assistant and no clerks for the division of nine trial attorneys. This condition has been commented upon before and relief has been requested without result.

Another branch of our work which has become more onerous in 1935 and 1936 is that for the Board of Education. Both litigated and non-litigated problems raising fundamental questions of educational policy are now arising in greater numbers than ever before and many of them have legal aspects which are submitted to this division. Such matters range from disputes arising within the education system itself, such as controversies between teachers or prospective teachers and administrative boards, to taxpayers' actions to reduce the size of classes. Many civil service actions are also included.

One group of cases raised the question as to whether or not teachers come within Article V, §6 of the State Constitution requiring that appointments and promotions in civil service shall be according to merit and fitness. The Board of Education ruled that teachers came within such civil service provisions and were upheld by the Supreme Court in *Brahdy* v. *Board of Education,* N. Y. L. J. Aug. 11, 1936 and by the Court of Appeals in *Carow* v. *Board of Education,* 272 N. Y. 341. The *Brahdy* case is now before the Appellate Division.

Another group of cases raised the important question as to whether or not examinations as now conducted by the Board of Examiners conform to the competitive principle enunciated in the State Constitution. 30 petitioners brought mandamus proceedings simultaneously, of which 2 were selected as test cases. The Board of Examiners was upheld by the Appellate Division which affirmed the lower court. (*Sloat* v. *Board of Examiners,* and *Neulander* v. *Board of Examiners,* N. Y. L. J., Dec. 19, 1936). These cases are now pending before the Court of Appeals.

It is pleasing to report that of approximately 30 appeals taken to the Commissioner of Education, the Board of Education represented by this division was sustained in all but one.

Aversa v. *Finegan,* N. Y. L. J., December 23, 1936, was an action for a declaratory judgment brought by social investigators employed in the Emergency Relief Bureau. Judgment was sought declaring such employees to be in the exempt class of the civil service and entitled to take qualifying examinations for the position of Social Investigator in permanent divisions of government administrative relief after June 30, 1937. Mr. Justice Shientag held that the legislature did not intend to place the employees of emergency relief agencies in the exempt class of the civil service and that the plaintiff and others similarly situated must submit themselves to an open competitive examination.

Ira Fink v. *James E. Finegan, President of the Civil Service Commission, et al.,* was an application for an order of mandamus directing the Commission to set aside an oral examination held for the position of police surgeon, medical officer in the Fire Department and medical examiner in the Department of Sanitation. It was claimed that force and executive ability were personality traits; that the examiners used a subjective standard in rating the candidate, and that the examination was not objective or competitive.

The motion was denied at Supreme Court, Special Term Part I, New York County, and the denial was affirmed by the Appellate Division, with leave to appeal to the Court of Appeals. The Court of Appeals (270 N. Y. 356) reversed to the extent of granting an alternative order, with an opinion by Judge Finch in which the Court enunciated the rule to be that oral exminations must be conducted in accordance with an objective standard, subject to challenge and review by other examiners of equal ability.

The alternative order was tried before Mr. Justice Leary, Supreme Court, New York County, in November, 1936. The Court directed a verdict in favor of the respondent Municipal Civil Service Commission holding that the examiners rated the personality traits upon the basis of evidence of the possession or lack of such traits, as indicated by the things seen, heard and observed by them during the course of the examination (N. Y. L. J., January 22, 1937).

Many proceedings have been brought throughout the year to compel the Chamberlain to pay moneys to beneficiaries whose earmarked funds were not available because they had been invested in mortgage certificates and similar investments that had depreciated to such a degree that they were of little value. Because of the holding in *Matter of Schmidt,* 266 N. Y. 225, the Chamberlain is in the difficult position of endeavoring to aid the beneficiaries to recoup their entire funds without requiring the use of public moneys to make up any deficiencies. There have been a number of decisions since the Schmidt case which have limited the liability of the Chamberlain and have proven helpful in the Chamberlain's efforts to avoid payment from public funds of an amount equal to the investment.

In the past year, on advice from this office, the Chamberlain has instituted a policy of making parties to the proceeding the Chamberlain who made the investment now disclaimed by the beneficiary and the sureties on his official bond. In this manner, it is anticipated that the Chamberlain will have less difficulty in securing redress from the sureties.

As a result of a number of lower court decisions and the policy of this office, the Chamberlain's liability is limited and governed by the following precepts:

1. Where the Chamberlain followed the direction contained in the original order of deposit and there was no negligence on his part, there is no liability.
2. Where the order of deposit was silent as to disposition of the fund, the Courts have construed such silence as permitting an investment by the Chamberlain.
3. Where the order of deposit authorized an investment in a guaranteed mortgage, an investment in a certificate, or part of a mortgage, has been held legal.

Last year's report referred to a plan of the Chamberlain to reimburse beneficiaries who suffered losses because of investments made by former Chamberlains and through no fault of their own. This plan has been put into effect and partial payments have been made under it. If the plan continues to work successfully all beneficaries will be reimbursed without appropriations from public funds.

LEGISLATIVE—Reuben A. Lazarus, Assistant in Charge.

The regular legislative session of 1936 convened in ordinary session on the first day of January and adjourned *sine die* on the thirteenth day of May, 1936. The Legislature reconvened in extraordinary session on the twentieth day of October, 1936, adjourning finally on the same day.

The regular session was the most protracted, and the extraordinary session the briefest in twenty-five years.

The high record of bills considered during a single session, established in 1935, was exceeded this year.

During the 1936 session, 4,501 bills were introduced: 2,186 in the Senate and 2,315 in the Assembly. One thousand four hundred and fifty-seven (1,457) of these were amended and reprinted—704 in the Senate and 753 in the Assembly. Thus, 5,958 separate legislative propositions were presented to both branches of the Legislature for consideration. The average annual number of bills considered in recent years was slightly over four thousand.

Approximately half of all bills introduced directly or indirectly affect the interest of the City of New York.

During the thirty-day period allotted to the Governor within which to act upon bills passed within the ten days prior to final adjournment, he was called upon to determine the merits or demerits of 791 legislative measures.

From the convening of the Legislature until the beginning of the thirty-day period, the Governor had considered and acted upon 382 bills, approving 358 and vetoing 24 of the 606 bills transmitted to him. Twenty-eight (28) bills were recalled by the Legislature. One Hundred and ninety-six (196) measures were left undisposed of, and received executive attention during the thirty-day period.

Thus, a total of 1,173 bills were passed by the Legislature and transmitted to the Governor. Nine hundred and forty-four (944) bills received executive approval and became law and 218 were vetoed. Twelve (12) of the bills recalled were not returned to the Governor. The apparent discrepancy of one bill is explained

by the fact that the appropriation bill became law in part, and was vetoed in part.

During the extraordinary legislative session there were 3 bills introduced, considered and passed and signed by the Governor.

As soon as returned from the State Printer all bills were examined in this division to determine their effect on the interests of the City of New York and also to ascertain if the administration of any agency of the city or county government was affected thereby. All bills affecting the City were forwarded to the Mayor.

The Legislative Program of the City consisted of 52 bills. Such measures were designed to improve administration and to promote the efficiency of the agencies of the government of the City. Thirty-three (33) such measures, including most of those of major importance became law.

At the head of the list of bills sponsored by the City is Chapter 483. This measure establishes a Board of Statutory Consolidation whose duty it is to draft the Administrative Code to complement the new short form of Charter adopted at the general election. The Board consists of the Mayor, the Comptroller the President of the Board of Aldermen and the Corporation Counsel. It is directed to continue the work of the codification division of the Charter Commission.

Another important bill enacted is Chapter 414, which extended until July 1, 1937 the power of the City to impose emergency taxes to defray the cost of relieving the suffering caused by unemployment.

Two other measures of major importance enacted are Chapters 543 and 544. The former authorizes the City to issue $7,000.000. of bonds to finance the City's share of the 1939 World's Fair, and the latter empowers the City (a) to lease to the Fair corporation, during the period of the Fair, land owned by the City, (b) to enact a special code of ordinances for the regulation of the area occupied by such Fair, and (c) to take other steps in preparation for the Fair to facilitate agreements between the City and the World's Fair corporation.

A law was enacted establishing the New York City Tunnel Authority (Chapter 1). It is granted power to construct tunnels

beneath the East River connecting Manhattan and Queens and Manhattan and Brooklyn. The tube between Manhattan and Queens is now under construction. Plans for a tunnel from the Battery to Hamilton Avenue, Brooklyn, are under discussion.

A measure of special interest is the one enacted into law as Chapter 497. This act regulates the admission of minors to theatres and more particularly motion picture theatres. Spasmodic enforcement of the former provisions of the Penal Law had proven to be ineffective. The absolute prohibition against the admission of minors under sixteen years of age unless accompanied by an adult was not supported by public opinion. Therefore, an enabling act was drafted granting to cities the power to adopt and amend local laws adapted to local conditions. It contains certain minimum requirements, i.e., a special section for children, licensed matrons in attendance, non-admittance of children during school hours, only pictures licensed by State Department of Education to be exhibited, and observance of health and fire regulations as a condition precedent to the issuance of a license.

A measure having for its purpose the stimulation of building in this City was Chapter 474. It exempts from taxation for five years the increased value of buildings resulting from repairs or alterations. It is hoped that this measure will encourage building improvements and reduce the number of unemployed men in building trades.

The so-called "Bankers' Agreement" law was amended by Chapter 668. It authorizes the City to issue $30,000,000 in serial bonds to be used to retire outstanding revenue notes issued in 1933, and permits back taxes for 1933 and prior thereto to be paid into the General Fund. From such fund an appropriation will be made to the annual budget to offset the $7,000,000 which will become due each year for the redemption of the serial bonds. In other respects the "Bankers' Agreement" is modified and greater freedom of action is restored to the City during the remainder of its life. Incidentally, the bill saved the City approximately $2,000,000 in refinancing its securities at lower rates of interest. It was also agreed with the committee of banks that the future maximum interest is to be at the rate of 2% instead of 4% fixed at the time of the making of the agreement.

Chapter 721 is worthy of mention. The efforts of the Commissioner of Public Markets, Weights and Measures to administer properly the racketeer-ridden public markets have been hampered by serious obstacles. The law which gave the Commissioner the power to "make, amend or repeal rules for the government, regulation, control, discipline and conduct of the department" afforded him little power to punish violations except by revocation of license. Consequently, racketeers or their agents continued to ply their illegal calling with immunity even after the revocation of a license, since the Commissioner could not bar them from markets. A bill to correct this condition by amending the law had failed last year. This year, however, after an intensive drive and by a very close vote, the bill passed and the Commissioner may now proceed by fine or injunction.

Another troublesome condition was corrected at the 1936 session by Chapter 610. As a result of an investigation by the Commissioner of Accounts two members of the Examining Board of Plumbers were charged with bribery, perjury and accepting a gratuity, and were indicted. They were removed and the third member resigned.

It was plain that the whole system of examination and licensing master plumbers should be changed. After consultation with representatives of the plumbing industry, a bill was agreed upon and became law. Hereafter examinations will be conducted by the Municipal Civil Service Commission. The Department of Health was designated as the licensing authority because it already supervises plumbing facilities in protecting public health. The Spread of amoebic dysentery at the Chicago Fair was traced directly to improper plumbing.

Attention was given to the position of those who suffered losses through investment by former Chamberlains of trust funds deposited pursuant to court orders. Many victims of such losses are without a legal remedy. Large sums had been invested in certificated mortgages on real property which, subsequently, had become practically worthless. A plan was devised and incorporated in the bill which is now Chapter 518. It authorizes the Chamberlain to charge a fee for receiving cash deposited in lieu of bail, the proceeds to be devoted solely to paying losses sustained by persons whose money had been deposited in the office of the Chamberlain. The burden of paying the small fee will fall on

persons charged with crime who heretofore paid no part of the clerical cost of handling cash bail, although infants, incompetents and litigants all are compelled by law to pay a small fee for the keeping and disbursing of their moneys. The bill is state-wide in its effect. Fees collected by County Treasurers outside of the City will be paid into the general funds of the counties for the reduction of taxation.

Among other bills on the legislative program of the City and enacted at the 1936 session are the following:

Chapter 51: Definitely vesting in the Fire Department the duty of regulating combustibles, a power left in doubt since the enactment of the so-called "McCall Act" in 1933 creating the Departments of Buildings in the five boroughs. The question of jurisdiction was settled by the decision of the Court of Appeals in the Case of *Bacrenklau* v. *Thatcher*, 269 N.Y. 494, which decided that such power resided in the Building Department but suggested clarifying legislation.

Chapter 52: Clearly sets forth the duty of the Fire Commissioner, and is companion to Chapter 51, above.

Chapter 851: This law is an outgrowth of the Hayward case. An appeal from the decision of removal taken to the State Commissioner of Education resulted in a reversal on the ground that the entire membership of the New York City Board of Education did not sit during Hayward's trial and the removal was, therefore, illegal. To require the attendance of the whole board at such hearings would tend to interfere with the conduct of other important business of the Board. The new law permits a hearing by a Committee of the Board which is then authorized to reject, confirm or modify the conclusions of its committee.

Chapter 694: Is the result of a campaign to make possible the preservation of the Brooklyn Academy of Music. If the Academy had not been relieved of taxation this historical and cultural institution would have been compelled to go out of existence.

Chapters 588, 767, 769: These three new laws amend the General Municipal Law and the Education Law in relation to claims against the Board of Education and the Board of Higher Education and require the filing of a notice of claim for personal injury with the Comptroller within thirty days before the

institution of an action or proceeding on such claim as a condition precedent to the maintenance of such action or proceeding. This will be of advantage to all parties concerned as it will afford an opportunity to investigate the facts at a time when the facts are still fresh in the minds of witnesses. If the facts alleged are found to be true, just claims can be settled promptly and inexpensively. These laws bring the procedure into harmony with the practice followed in adjusting other similar claims against the City.

Chapters 786, 787, 788: These acts amend the New York City Grade Crossing Elimination Act and the Charter so as to require the consent of the City to any plan by the Transit Commission to eliminate crossings at grade by *elevating* the tracks. It is the policy of the City to *depress* tracks and ultimately to abolish all elevated railroads within the City. The provision against elevation is extended to include Queens. The amendments also clarify the existing law in relation to the allocation of the cost of elimination of crossings under the Enlarged Plan. These measures have a high potential value.

Of the remaining new enactments Chapter 741 should be mentioned. It obviates the necessity of attendance of officials in court to prove the authenticity of official records. Much time will be saved by permitting the use of authenticated copies. Chapter 380 enables the City to use franchise tax reports of real estate corporations in combatting excessive condemnation claims. Chapters 495 and 614 perfect existing law in relation to completing sewer connection with Ward's Island sewage purification plant. Chapter 516 will save the City useless advertising in connection with the appointment of appraisers in the watershed. Chapter 756 makes possible the establishment of a coast-guard aviation station in Jamaica Bay.

The bill to enable municipal corporations to establish, own and operate a plant to generate electricity or to set up a local power authority by local law was stifled in committee.

The Senate failed to pass a proposed act which would have provided a simple, inexpensive method whereby the owners of property on watergrant streets would be released from the covenant to repave such streets by the payment to the City of a reasonable sum per front foot, thus removing a cloud on title.

Passage of such a bill would encourage development of the waterfront and would result in increased assessed valuations. Approximately thirty miles of street frontage along the Hudson and East Rivers are affected, and the failure of this bill in the Senate results in serious injury to the owners and loss of revenue to the City.

A bill to tax fairly the structures erected on land taken for water supply purposes was again defeated this year for reasons that were in large part geographical but with the aid of votes of legislators from the City.

It remains one of the chief functions of the City's legal representative to carry on a determined opposition to numerous bills introduced annually, which are adverse to the interests of the City. Such measures take many forms and are graphic illustrations of the art of bill drafting perverted to improper uses. With thousands of bills pending during each session eternal vigilance and painstaking examination of every bill are essential. A provision may be tucked away in a general law amendment or a bill which is innocent enough when first printed but may be amended later in a manner highly inimical to the City's interests.

The extraordinary session was caused by the heavy registration of voters which, in the opinion of the Board of Elections, would make it impossible for all registrants to vote within the normal time. A bill was drafted to extend the hours for voting on election day from six o'clock to nine o'clock, to authorize the use of two voting machines in election districts of more than nine hundred registered voters, to provide additional clerks in such districts and to provide extra pay for election inspectors in the City. The bill authorized localities outside of the City to increase the per diem compensation in amounts not to exceed the $4.00 allowed in New York City. The bill became Chapter 945.

The Court of Appeals in the case of *Osborn* v. *Cohen, 272* N.Y. 55, on October 13, 1936, held invalid, on the ground that it had been passed without a Home Rule message, the law providing for a referendum on the question of a three-platoon system in the uniformed forces of the Fire Department. Under the call for the extraordinary session the Governor permitted the

consideration of a new bill and it was passed in better form and under a Home Rule message. It became Chapter 946.

The third bill enacted at this session merely provided for the expenses of the extraordinary session which amounted to $13,861.50. It became Chapter 947.

PENALTIES—Charles C. Weinstein, Assistant in Charge.

The principal duties of this division are in matters involving violations of the Greater New York Charter, the Code of Ordinances, the Building Zone Resolution, the Multiple Dwelling Law, the Building Code, the Labor Law and departmental rules and regulations.

Board of Standards and Appeals.—As a result of the numerous cases tried and determined in 1935 and 1936, the authority of the Board of Standards and Appeals has been strengthened and its jurisdiction more clearly defined. Last year we handled 49 certiorari cases brought to review its decisions. The Board was sustained in 40 cases in the lower courts. In one case it was sustained by the Appellate Court and four cases are now pending upon appeal.

Since the enactment of Chapter 764 of the Laws of 1933, known as the McCall Bill, confusion has arisen as to the powers and jurisdiction of the Board of Buildings. The cases tried this year have determined that its power under §411 of the Charter is limited to the variance of the mode, manner of construction or materials to be used. It cannot vary the minimum requirements of the Multiple Dwelling Law governing the standards for light, ventilation and fire protection. Further, the Board of Buildings has no appellate jurisdiction to review rulings of Commissioners of Buildings, these powers being vested exclusively in the Board of Standards and Appeals (Charter, §719). See:

Falcone v. *Board of Standards and Appeals,* Sup. Ct. N. Y. County, N. Y. L. J., Nov. 27, 1936.

Powell v. *Board of Standards and Appeals,* Sup. Ct. Kings County, N. Y. L. J., Oct. 20, 1936.

The powers of the Commissioner of Licenses to interpret and enforce the provisions of the zoning law in regard to sites for

motion picture theatres were defined and limited by the Court of Appeals in *Matter of Goelet* v. *Paul Moss, &c* and *Matter of Henry Phipps Estates* v. *Paul Moss &c.,* argued in 1936 and decided January 18th, 1937 (273 N. Y. 503.)

These cases arose upon the refusal of the License Commissioner to approve sites for the erection of motion picture theatres which were otherwise permitted under the Building Zone Resolution. The Court held that the only duty of the Commissioner of Licenses on an application for a site approval, was to consider the question from the standpoint of public health, safety and morals and not as a problem involving city planning.

Again, in *People* v. *Wolfe,* 272 N. Y. 608, the Court of Appeals affirmed the conviction of the defendant who was found guilty in the Municipal Term Court of illegally parking motor vehicles in a business district in violation of Article 2 Section 4, subdivision 15 of the Building Zone Resoluton. The decision has aided materially in maintaining a consistent and harmonious policy in regard to parking spaces for motor vehicles.

Health Department. Smoke Nuisance. — Two important cases were brought for violation of §211 of the Sanitary Code prohibiting the emission of dense smoke. Each became a battle between experts on the one hand and lay witnesses on the other. The City by the testimony of inspectors of the Board of Health and others proved that dense smoke was discharged by the smokestack on defendants' premises, while the defendants by the testimony of engineers and other experts endeavored to establish that the factory equipment was mechanically perfect and that no substantial quantity of smoke could be discharged into the atmosphere. In one case the defendant was the New York Steam Corporation which was found guilty and fined $250. and in the other the defendant was the Brooklyn Edison Company, Inc., which was found guilty and fined $150. It is believed that these convictions will sustain the Board of Health materially in its campaign to keep the air of the City of New York free from smoke contamination.

Milk.—Two convictions were obtained during the year which will strengthen the power of the Board of Health to maintain the purity of milk sold in the City. In the first case the test recently developed by a chemist of the Health Department to determine whether or not milk labelled as pasteurized had really been so

treated, was approved and accepted as competent evidence. *Department of Health* v. *Hendrix Dairy Farms, Inc.* (Municipal Term, Kings County—Conviction Mar. 25, 1936). In the second case the defendant was convicted of selling milk without a permit. He was not permitted to escape by the claim so often made that he was not a peddler but represented one of the various companies from which he purchased milk. *People* v. *Kalman* (Municipal Term, Bronx County—Conviction Dec. 4, 1936).

Pure Food.—Other convictions obtained in Board of Health cases were *People* v. *Sivick* (Municipal Term, N. Y. County. Conviction Oct. 2, 1936) in which the defendant was convicted of re-labelling and re-selling canned goods unfit for human consumption and *Katz* v. *John L. Rice, Commissioner* and Magid v. Same (Sup. Ct. N. Y. County, N. Y. L. J., July 17, 1936), in which the defendants were denied the right to maintain restaurant stands upon the sidewalk

Police Department.—Police Department action was sustained in two cases of general interest. In one, pin ball games in which prizes were offered were held to be forbidden under §982 of the Penal Law as amended by the Esquirol-Robinson bill, enacted May 7, 1934. In the other the Court held that the option system of dog racing was a violation of §986 of the Penal Law. The pin ball game decision will save the lunch money of thousands of school children, as well as millions of nickels of other citizens. The decision on dog racing will sustain the Police Department in preventing an influx into the City of racketeers and other undesirable elements.

Meyer v. *Moss,* 247 App. Div. 704.
Lyttle v. *Valentine,* Sup. Ct. Queens County, N. Y. L. J., Aug. 14, 1936.

Tenement House Department.—The most important decisions in cases for the Tenement House Department were the following:

In *Adamec* v. *Post,* Sup. Ct. N. Y. County, N. Y. L. J., Apr. 11, 1936, the plaintiff sought to enjoin the Tenement House Commissioner from forcing him to vacate his premises because of failure to comply with the provisions of the Multiple Dwelling Law. The constitutionality of several sections of the act was contested. The Court at Special Term denied the application for an

injunction and upheld the authority of the Tenement House Commission. This decision was affirmed in 273 N. Y. 250.

In *Zicarelli* v. *Post,* Sup. Ct., N. Y. County, N. Y. L. J., Aug. 5, 1936, Class A and Class B dwellings under the Multiple Dwelling Law were defined for the first time. The distinction lies in the relative permanence of occupancy. Class A dwellings are those occupied or constructed to be occupied for permanent residence purposes. Class B dwellings are those which are occupied or designed to be occupied transiently, such as hotels, rooming houses and lodging houses.

Department of Markets.—An attempt was made by members of the Harlem Markets group to prevent the City from prosecuting violations of law in the Harlem Markets area. The suit was brought by Harlem Markets Co., Ltd., on behalf of itself and others against the Mayor and the heads of various City departments. The complaint asked for $50,000 damages After a hearing, the motion for a temporary injunction was denied and subsequently the complaint was dismissed. *Harlem Markets Co., Ltd.,* v. *LaGuardia,* Sup. Ct. N. Y. County, N. Y. L. J., Mar. 5, 1936. Other groups of holders of market permits attempted to prevent the Park Avenue market enclosure and the removal of the open air Park Avenue market The improvement was essential because of congested traffic conditions in the neighborhood. *Ortiz* v. *Morgan,* Sup. Ct. N. Y. County, N. Y. L. J., May 22, 1936.

Court of Domestic Relations.—The work of the Court of Domestic Relations and of the Assistants assigned to that Court grows in volume and importance each year, involving problems presented by wayward children, broken families and indigent relatives. In the following cases, points were presented which may be found of interest:

Picker v. *Picker,* Domestic Relations Ct. Bronx County, May 12, 1936, not reported, established the principle that the Department of Public Welfare may bring an action against a wife for the support of her husband who has become or is likely to become a public charge.

In *Betz* v. *Horr,* Domestic Relations Ct., Queens County, N. Y. L. J., Oct. 22, 1936, it was held that a natural parent is liable for the support of a child who is likely to become a public

charge because of physical infirmity even though that child may have reached maturity.

In *Matter of People ex rel Marrally* v. *Warden,* Sup. Ct., Kings County, N. Y. L. J., May 2, 1936, it was determined that a person sentenced in the Family Court may be sent to the Workhouse. It is not required that he be sent to a civil prison.

In *Lee* v. *Smith,* Domestic Relations Ct., N. Y. County, N. Y. L. J., Nov. 24, 1936, it was held that an illegitimate child is under a legal obligation to support a mother who is liable to become a public charge.

Miscellaneous.—This division is also charged with the trial of paternity actions in which orders of filiation are sought determining the paternity and charging the father of the child with support. The assistant in charge of paternity proceedings also attends sessions known as violation of Probation Sessions, held between the hours of 8 and 12 P. M. in the Court of Special Sessions.

This division assisted in the preparation and drafting of a Building Code and Building Zone Resolution for the World's Fair.

It also assisted the Legislative Division in drafting amendments to the Agriculture and Markets Law of the City of New York, which gave to the Commissioner of Markets in New York City powers corresponding to those of the State Commissioner.

Among other studies, this division prepared a report on the law of Signs and Billboards. Remedial legislation was suggested.

REAL ESTATE—Anson Getman, Assistant in Charge.
Phillip W. Haberman, Jr., Assistant in Charge of Litigation.

The Real Estate Division may be subdivided, primarily, as follows:

1. Street Opening Bureau;
2. Condemnation Bureau;
3. Miscellaneous Matters.

The activities of the Title Bureau relate to all three. The work of the Street Opening Bureau and the Condemnation Bureau may be classified as follows:

1. Preliminary Proceedings;
2. Trials.

In this connection, (a) the Title Bureau performs an important function in that it examines title to all of the property involved and furnishes reports as to sales; (b) experts are employed involving the fixation of compensation and the taxation of costs.

3. Decrees, both tentative and final;
4. Appeals.

Under the heading "Miscellaneous Matters," the activities consist, primarily of the following:

1. Street Closing Proceedings, involving Mandamus Proceedings;
2. Unknown Owner Proceedings;
3. Change of Grade Proceedings;
4. Foreclosure of Mortgages;
5. Foreclosure of Tax Liens;
6. Preparation of Leases;
7. Preparation of Opinions;
8. Examination of title incident to demolition of buildings;
9. Consideration of various questions relating, among others, to street dedications, parks, markets, waterfront property, tunnels, schools, housing, airports, World's Fair Grounds, special "Authorities," legislation.

On January 1, 1934, there were pending approximately 500 condemnation proceedings, involving about 40,000 parcels of land being acquired and about 250,000 parcels of land to be assessed. Practically none of the title examination work had been done. The number of Title Examiners available was wholly inadequate. As a result, trials could not be expedited. Because of the lack of title information, awards were being made to "Unknown Owners" and decrees were being prepared accordingly. As a result there were several hundred "Unknown Owner" proceedings each year, involving many more damage parcels. In addition there were not enough Computers of Assessments. Decrees could not be promptly prepared. There was a delay in the payment of awards. Large sums of interest were accumulating.

In the early part of the year 1935, provision was made for an emergency force, consisting principally of Title Examiners

and Computers of Assessments. In the early part of 1936, an additional emergency force was authorized. As a result the title examination work in street opening proceedings is, for the first time, nearly on a current basis. There is, however, a substantial accumulation of title examination work still to be done in connection with the foreclosure of tax liens and numerous other miscellaneous matters.

Street Opening Proceedings

From July 1, 1935 to January 1, 1937, title examinations in street opening proceedings have been made as follows:

Fee Ownership	about	10,670 parcels
Easements	"	11,450 "
Sales Data	"	5,660 "
	"	— "
Total	"	27,780 "

These emergency forces, added to the regular staff, made possible the completion of a large number of tentative and final decrees as well as trials.

The first emergency force was dispensed with about November 1, 1936. The second emergency force, which will function until the early part of the year 1937, should be continued.

There were comparatively few new street opening proceedings authorized during the years 1934-1935. In 1936, 32 new street opening proceedings were authorized.

On January 1, 1936, there were 70 street opening proceedings, involving 11,000 parcels, wholly or partially untried. To these should be added 32 new proceedings authorized during the year 1936, making a total of 102 proceedings.

Fifty-two of these proceedings, involving 6,953 parcels, have been tried and 23 have been partially tried.

Of these proceedings, instituted prior to January 1, 1936, only 15 remain to be tried. It is expected that these will be tried during the first two months of 1937. Earlier trials have been delayed due to the so-called "World's Fair" Proceeding, the trial of which extended over a period of four months. It thus appears

that practically all of the street opening proceedings have been tried which were instituted prior to 1936.

Condemnation Bureau Proceedings

On January 1, 1936, there were 29 untried and 9 partially tried proceedings in the Condemnation Bureau. To these should be added 44 new proceedings authorized and started during the year 1936, making a total of 82 proceedings. Twenty-four of these proceedings have been tried.

Of these proceedings, instituted prior to January 1, 1936, only 14 remain to be tried. Most of them are held up pending the outcome of appeals involving similar questions.

Experts' Bills

On January 1, 1934, there was a large accumulation of bills and claims of expert witnesses. Some of the claims were three or four years old and were made by about 60 experts. Efforts have been made to bring about a reduction and adjustment with marked success. Bills aggregating $913,412, including services rendered since 1933, have been adjusted and taxed for payment at $650,849.

At the present time, practically all of the bills rendered for completed services, in addition to those already adjusted and taxed, amounting to over $150,000. are in the course of taxation, so that there are now outstanding for adjustment and taxation only those claims which will be made in the future in connection with proceedings which have not been consummated.

Stenographers' Bills

Approximately $28,000. of stenographers' bills, which were long in arrears, have been taxed for payment. Bills now outstanding are those which will be submitted in connection with pending proceedings not yet consummated.

Awards

In previous reports it has been pointed out that the awards made prior to 1934 were approximately 50% above the estimates of the City's real estate experts. During the past year the awards

made in all proceedings averaged less than 12% above the estimates of the City's real estate experts, which were as follows:

	City's Estimate	Awards
Street Opening Bureau...	$11,570,000	$12,870,000
Condemnation Bureau ...	6,860,000	7,730,000
	$18,430,000	$20,600,000

Had awards continued at the old average of 50% over the City's figures, the cost would have been $27,645,000.

Decrees

During the year 1936, decrees in Street Opening proceedings have been filed as follows:

	Awards
85 tentative decrees involving 5,994 Parcels	$27,600,000
80 final decrees involving 9,285 Parcels	23,700,000
In Condemnation Bureau (See below)..	2,700,000
	$26,400,000

Other final decrees are ready for filing as soon as further action is taken by the Board of Estimate and Apportionment.

The completed final decrees have been forwarded to the Comptroller, thereby enabling him to pay the awards and stop the running of interest.

The number of unfinished tentative decrees in *Street Opening* proceedings has been greatly reduced during the year 1936. At the present time there are only 63 to be prepared involving about 9,600 damage parcels and awards aggregating about $6,500,000.

At the present time there are 58 final decrees in *Street Opening* proceedings to be prepared involving about 5,150 damage parcels and awards aggregating about $8,640,000. To these must be added the number of tentative decrees above stated, on the completion thereof, which means that there are ultimately 121 final decrees to be prepared.

During the year 1936, 14 tentative decrees have been filed in proceedings pending in the *Condemnation Bureau,* involving awards aggregating approximately $6,200,000 and 15 final decrees have been filed, involving awards of approximately $2,700,000.

Appeals

Satisfactory progress has been made in the disposition of old appeals. Only 8 appeals taken before 1936 remain to be disposed of.

20 new appeals were taken by the City during 1936;
74 new appeals were taken by claimants.

At the present time, there are pending:

13 appeals in which the City is appellant;

64 appeals in which claimants are appellants.

Over 800 "Unknown Owner" Proceedings have been conducted, involving about 1,160 damage parcels, title to which was examined in connection with such proceedings.

Special attention is called to the results obtained in the following proceedings:

Matter of Acquiring Title to Land for Flushing Meadow Park to be used as a Site for the World's Fair.

The first tract acquired for this site in the year 1936 contained approximately 400 acres in about 500 different ownerships

Claims were presented aggregating	$10,350,000
The City valued the property at about..	2,490,000
The Court awarded	2,635,000

which is less than 6% above the City's valuation.

Board of Estimate authorized acquisition, May 1, 1936.
Title vested in the City, May 15, 1936.
Trial concluded and awards made, December 19, 1936.

Matter of acquiring title to land for East River Drive East 92nd to East 122nd Streets, Manhattan.

The land acquired for the East River Drive between East 92nd and East 122nd Streets, is in the first section of the Drive

along the East River and Harlem River in the Borough of Manhattan. It comprised about 120 parcels.

Claims were presented aggregating approximately	$2,440,000
The City valued the property at about.....	1,322,200
The Court awarded	1,490,000

which is less than 13% above the City's valuation.

Matter of Jamaica Bay—Acquisition of a Marginal Street for the Improvement of the City's Waterfront

This condemnation proceeding has been pending for over 12 years and involved appeals by the claimants to the Appellate Division and the Court of Appeals. After a retrial, the City appealed. A settlement has been effected as to part of the proceeding embracing 40 parcels for which the Court made awards aggregating the sum of $56,729.79. Said awards carried interest at the rate of 6% per annum for 12 years. The payment of these awards without interest resulted in a saving to the City of about $41,000.

Matter of Acquiring Title to Land for Boscobel Avenue, Bronx.

In January, 1934, an award was made for Damage Parcel No. 36 on the basis of total destruction, although only about one-half of the building, which was a 6-story elevator apartment house, was taken. The owner claimed that the part of the building remaining was worthless, and on that theory the Court awarded $300,000 for the building. The Apellate Division and the Court of Appeals affirmed.

The owner then utilized the remainder of the building, whereupon a motion was made to reopen the decree on the ground that the award was obtained by fraud. The motion was granted on the ground that a retention of the award and the restoration of the building would result in an unjust enrichment to the owner at the expense of the City.

TAXES—Oscar S. Cox, Assistant in Charge.

The duties and productive work of the tax division have increased many-fold over prior years. Its jurisdiction now includes the legal aspects of real property taxes, water charges,

assessments, tax liens and Federal taxes on City departments, sales, utility, business and personal property taxes.

Approximately seven times as many certiorari proceedings were settled in 1936 as the average number settled per year from 1929 through 1933. Last year, 3,460 proceedings were so disposed of, as compared with an annual average of 495 in the 1929-1932 period.

The result of the settlements for 1936 was more than eight times as beneficial to the City as the average results for the years from 1929 through 1933. The reductions granted upon settlements in 1936 amounted to less than 8/10 of 1% of the assessed valuations. The annual average of reductions for the period from 1929 through 1933 amounted to 6.752% of the assessed valuations.

In 1933 the City settled 917 proceedings involving assessed valuations of about one billion dollars by granting about seventy-three and a half million dollars in reduction of assessments. In 1936, four times as many proceedings involving over two billions of dollars in assessments were settled with a reduction of less than seventeen million dollars in reduction of assessments.

The following is a summary of certiorari settlements for the past eight years:

Year	Proceedings Settled	Assessed Valuations	Reductions in Assessments	Percentage of Reduction to Assessment
1929	138	$188,538,700.	$5,777,200.	3.064%
1930	253	228,186,500.	10,268,300.	4.499%
1931	455	494,081,039.	63,043,082.	12.762%
1932	709	698,978,150.	24,459,374.	3.499%
1933	917	1,013,804,400.	73,590,225.	7.258%
Totals	2,472	$2,623,588,789.	$177,138,181.	
Average per year	495	$524,717.757.80	$35,427,636.20	6.752%
1934	1508	1,395,801,720.	89,540,648.	6.415%
1935	2008	1,392,369,785.	32,315,650.	2.321%
1936	3460	2,196,853,280.	16,883,350.	0.77%

The Trial of Certiorari Proceedings.

During the past year there has been much discussion of various proposals to speed the trial for settlement of certiorari proceedings. The discussion has disclosed a widespread misapprehension of the facts. A certiorari proceeding can be reached and tried in about a third of the time required for other types of

cases. There are instances—by no means unusual—where certiorari proceedings have been reached and tried less than eight months after the writ was issued. The main delays are not due to the Courts or the Corporation Counsel's office. The simple fact is that most writs are not pressed for trial. For example, of over two hundred proceedings which were assigned to referees for trial, in not more than a half dozen did the attorneys for the taxpayers fix a date for the trials within several months after the proceedings were sent to the referees.

There are evident reasons why most tax certiorari proceedings are not pressed for trial. In almost all of them, taxpayers are represented by attorneys for a contingent fee of one-third to one-half of the reduction. Thus proceedings are often the result of the desire of taxpayers for a windfall, since if they obtain no reduction and refund, it costs them nothing. An attorney on a contingent fee basis is generally reluctant to try a certiorari proceeding. He much prefers a settlement which involves no risks as to outcome, no disbursement for experts and not so much expenditure of time. There has thus developed the practice of putting cases on the calendar with no thought of trying them, but with the specific intention of pressing the City into a settlement.

The City has taken two steps to correct this practice of clogging the court calendars with cases which were never intended to be tried. One is not to settle proceedings which are without merit. In the long run this course will deter attorneys from putting flimsy cases on the calendar. The second step has been to join with the Real Estate Board, the State Chamber of Commerce and other associations in asking the Appellate Division to designate a special part of the Supreme Court to try these proceedings. A judge, unlike an official referee, has the power to dismiss proceedings which remain on the calendar without going to trial in a reasonable time. One judge in control of the calendar could rapidly detect and dispose of the proceedings which clog the calendar only for settlement purposes. This plan is now before the Presiding Judge of the Appellate Division, First Department, for action.

During 1936, sixty proceedings (ninety writs) were tried, which is eight times the average for the five years from 1929 to 1933, with results four times as favorable. The reductions in

1936 averaged 2.64% as against an average (1929-1933) of 10.18% of the assessed valuations of the property involved.

The following is a summary of certiorari trials for the past eight years:

Year	Proceedings Tried*	Amount of Assessments	Reductions in Assessments	Percentage of Reduction to Assessments
1929	4	$15,686,900.	$2,781,000.	17.72%
1930	4	22,323,500.	9,876,576.	44.24%
1931	5	82,794,000.	1,230,000.	1.48%
1932	8	14,684,400.	1,687,000.	11.42%
1933	14	33,532,000.	1,625,666.	4.84%
Totals	35	$169,020,800.	$17,200,622.	
Average per year	7	33,804,160.	3,440,124.40	10.18%
1934	15	34,691,500.	2,380,000.	6.86%
1935	38	68,402,550.	1,714,860.	2.507%
1936	60	120,307,300.	3,185,291.	2.64%

Attorneys on a contingent fee basis rarely—if ever—risk trying a case unless they are convinced there is a clear case of overassessment. Therefore the reductions granted by the Courts, averaging less than 3% would indicate that property in New York City is not generally assessed beyond its value "under ordinary circumstances" which is the standard of value established by the statute. There are, of course, some individual cases of overassessment because no human agency is infallible.

Some Leading Certiorari Decisions.

In the trial of certiorari proceedings this division has consistently maintained the proposition that the Charter provision dealing with the value of real property means what it says. The Charter provides that property shall be assessed for what it would sell for under ordinary circumstances. In the absence of a market for real estate in a depression period, such as 1933 and 1934, the property should be assessed at what it would sell for under ordinary circumstances in the real estate market, not what it would sell for in either a boom or depression market. In the case of adequately improved income-producing property, the capitalized average net income under ordinary circumstances is the best measure of its value. It is generally so accepted by intelligent buyers and sellers.

* Where several proceedings relating to the same piece of property for several consecutive years were tried together they are tabulated as one proceeding. This year, for example, ninety proceedings were tried if one or more proceedings for consecutive years relating to the same piece of property are classified as separate proceedings.

Under these principles a stability is given to the tax base which benefits taxpayers as well as the City. The lower Courts have agreed generally with the City's contention. (*See, Peo. ex rel Four Twenty Park Avenue, Inc.* v. *Sexton,* N.Y.L.J., Oct. 22, 1935, p. 1413; *Peo. ex rel. 444 Madison Ave Corp.* v. *Sexton,* N.Y.L.J., Feb. 3, 1936, p. 615.) There are now pending before the Court of Appeals two proceedings involving the precise question (*People ex rel. Eljac* v. *Miller; Peo. ex rel 505 8th Ave.* v. *Miller*).

The Courts also upheld the City's contention that actual rents should be capitalized in arriving at assessable value, where they were higher than the rental value claimed by the taxpayer. (*Peo. ex rel. 901 Seventh Avenue* v *Miller,* App. Div., N.Y.L.J. Oct. 24, 1936, p. 1346).

On the question of obsolescence, the City defeated, in the Appellate Courts, the claim that the old Waldorf-Astoria Hotel was totally obsolete and valueless during the last year of its use. (*Peo. ex rel. Waldorf-Astoria* v. *Sexton,* 248 A.D. 571).

In several cases, the City defeated claims of overvaluation merely by the cross-examination of the taxpayers' witnesses and without offering affirmative proof. In these cases, the Courts dismissed the writs and granted no reductions in the assessments (*Peo. ex rel. 33 Riverside Drive* v. *Miller,* N.Y.L.J., March 18, 1936, p. 1376; *Peo. ex rel. 856 5th Avenue* v. *Miller,* N.Y.L.J., January 6, 1937, p. 69). Similarly, the City has defeated claimed reductions in assessments because the taxpayers adduced no adequate proof to support their claims (*Peo. ex rel. 566 & 588 Seventh Avenue Corp* v. *Miller,* N.Y.L.J., Dec. 22, 1936, p. 2329; *Peo. ex rel. 681 Fifth Avenue Corp.* v. *Miller,* N.Y.L.J., December 26, 1936, p. 2386; *Peo. ex rel. Julia O. Inc.* v. *Sexton,* N.Y.L.J., February 1, 1936, p. 596; *Peo. ex rel. E. Ornstein, Inc.* v. *Sexton,* N.Y.L.J., March 7, 1936, p. 1205; *Peo. ex rel. Van Zan Realty Corp.* v *Miller,* N.Y.L.J., March 18, 1936, p. 1391; *Peo. ex rel. Chelsea Theatre Corp.* v *Sexton,* N. Y. L. J., June 2, 1936, p. 2806; *Peo. ex rel. Axinn Son Lumber Co.* v. *Miller,* N. Y. L. J., April 7, 1936, p. 1748; *Peo. ex rel. Garden Apartments* v. *Sexton,* N. Y. L. J., July 3, 1936, p. 41; *Peo. ex rel. Jennie Breit* v. *Miller,* N. Y. L. J., June 4, 1936, p. 2862; *Peo. ex rel. Fair Deal Realty* v. *Sexton,* N. Y. L. J., December 31, 1936, p. 2460).

Procedural Points in Certiorari Proceedings.

An application under Section 1545 of the Charter and Section 51 of the General Municipal Law to examine the Deputy Tax Commissioners' field books was defeated on the ground that the taxing authority is not required to testify to the methods used by it as long as the assessment can be sustained by any rational method. (*Peo. ex rel. 373 Park Ave.* v. *Tax Commissioners,* N. Y. L. J., April 13, 1936, p. 1933; cf. *Great Northern Railway Co.* v. *Weeks,* 297 U. S. 135).

The City has also had quashed writs which were issued to a party not aggrieved by the assessment and which were based on an improper allegation of overvaluation (*Peo. ex rel. 225 W. 90th St Corp.* v. *Miller,* affd. N. Y. L. J., Jan. 30, 1937, App. Div. 1st Dept. p. 516; *Peo. ex rel. New York Central R. R. Co. Inc. and 290 Park Avenue Corp.* v. *Goldfogle,* aff'd. 248 App. Div. 864.

An attempt by Knickerbocker Village, Inc., to obtain judgment on the pleadings in the certiorari proceeding was also defeated on the primary ground that triable issues of fact were involved in reviewing the total assessment (*Peo. ex rel. Knickerbocker Village, Inc.* v. *Miller,* N. Y. L. J., Aug. 11, 1936, p. 388, Aff'd. 249 App. Div. 733. Leave to appeal to Court of Appeals denied 249 App. Div. 814.

The Pending Certiorari Proceedings

This administration inherited about 30,000 certiorari proceedings to review real property assessments. On December 31, 1936, there were about 37,000 certiorari proceedings pending. Since 1930, many more proceedings have been commenced in a year than could be terminated. However, the trend is now being reversed.

The following tabulation of proceedings commenced indicates a marked decline.

Year	
1933	10,599
1934	8,173
1935	7,299
1936	6,157

It is due to four causes: (1) the improvement in real estate conditions since 1933; (2) the successive lowering of assessments in the years subsequent to 1933; (3) the tightening up on settlements by granting less in reductions; and (4) the more adequate handling of trials resulting in the granting of lesser reductions by the courts.

For 1937 there will probably be from four to five thousand writs instituted. There will likewise be as many writs terminated by settlement. In the month of January 1937, approximately nineteen hundred writs were disposed of by settlement.

The pressing problem now is to dispose of the tremendous back-log of 37,000 writs. The three City departments—Taxes, Finance and Law— having jurisdiction of the certiorari settlements have exercised every effort to solve this problem. A new tri-departmental settlement board has been created to speed the work. The Tax Department, with the cooperation of the Law Department, has disposed of many writs during the hearing period. A plan is now being devised by both departments to dispose of many writs during the remission period which extends to March 20, 1937. They will investigate the facts and writs relating to a particular piece of property. If the facts warrant it, an offer will be made to reduce the 1936 assessment by a stated amount in consideration of the taxpayer's discontinuance of the 1936 and all prior writs. Coupled with the other settlement methods, the City should begin in 1937 to cut into the back-log of old writs.

The New Tri-Departmental Certiorari Settlement Board.

In the short period of its operation, the new Settlement Board has proven to be a satisfactory means of settling troublesome and difficult proceedings. It commenced to operate on May 28, 1936. From that time until December 31, 1936, the board held hearings in 253 proceedings. It settled 152 or 60% of the proceedings in which hearings were held. In the proceedings which were settled, assessments of $167,237,500 were involved and reductions of $5,425,000 (3.24%) were granted.

Now that this board has worked out an administrative procedure it hopes to dispose of at least 500 proceedings in 1937.

Claims for Exemption.

Innumerable claims of tax and assessment exemption are passed upon by opinions. Only a few are litigated. During 1936, the tax division successfully contested the claim of a cemetery to exemption on lands lawfully held by it, but not used for burial purposes (*Springfield L. I. Cemetery* v. *City,* 271 N. Y. 66). The result of this decision was to make taxable millions of dollars of cemetery property which had previously been exempted.

The City also successfully contested the claim to exemption on lands which were formerly in Queens County and are now in Nassau County (*Leary* v. *City,* 248 A. D. 741). The case is now pending before the Court of Appeals.

A proceeding to determine the right of exemption from real estate taxes involving the Chrysler Building was finally lost by the City in the Court of Appeals. (*People ex rel. Cooper Union* v. *Sexton,* 273 N. Y. mem. p. 10). This decision does not establish any general proposition of law enlarging the field of exemption from real estate taxes. It involved the construction of a special act of the State Legislature on April 13, 1859 which had granted a specific exemption of all property conveyed and endowments made by Peter Cooper to Cooper Union.

Utility Assessments.

The tax division is negotiating settlements of most of the pending litigation brought by the utilities as a result of the two hundred million dollar increase in the 1936 assessments and a further increase for 1937. Most of thte utilities are willing to accept the 1936 valuations and to work out a mutually acceptable valuation for the 1937 assessments. These utilities claim that although the 1936 assessments are fair, the 1937 assessments are too high.

The Federal Taxation of City Departments and Employees.

The division unsuccessfully tried before the Board of Tax Appeals, the case involving the taxability by the Federal Government of the salary of the Chief Engineer of the Board of Transportation. It also participated before the Circuit Court of Appeals in the case involving the taxability of the salary of the Chief

Engineer of the Department of Water Supply, Gas & Electricity (*Brush* v. *Commissioner of Internal Revenue,* 85 F. (2d) 32).

Emergency Taxes.

For this purpose seven tax counsels have been provided, who work under the supervision of the head of the Tax Division. Briefly summarized, the work of the emergency tax group for this year has been as follows:

Legislative Drafting: All of the emergency taxes for 1936 were drafted and amended. Legislation extending these taxes for 1937 was also drafted by the division. Other legislation and supporting memoranda have been prepared to be used when and if the need arises.

Litigation: Various utilities have contested the constitutionality of the 3% utilities tax. These actions have been commenced both in the Federal and in the State Courts.

In *Southern Boulevard Railroad Co.* v *The City of New York,* N. Y. L. J., December 15, 1936, 86 Fed. (2d) 633, aff'd C. C. A. 2nd, Nov. 30, 1936, the railroad commenced an action in the United States District Court for the Southern District of New York for a refund of $8,776.75, taxes paid pursuant to Local Law No. 21 of 1934 as amended by Local Law No. 2 of 1935, on the ground that the local law as amended was unconstitutional because it denied to the plaintiff the equal protection of the law and deprived it of its property without due process of law. The City's motion to dismiss the complaint was granted by the District Court and on appeal was affirmed by the Circuit Court. This decision meant the retention of many millions of dollars by the City. Similar actions were commenced by the New York Rapid Transit Corporation and by the Brooklyn and Queens Transit Corporation in the Supreme Court, New York County. They are still pending.

The test proceeding by the *Standard Gas Light Company* commenced yast year was successfully terminated during the current year. *Standard Gas Light Co.* v. *City of New York,* 161 Misc. 192, aff'd 248 App. Div. 583, aff'd 272 N. Y. 611. As a result of this victory by the City, applications for refund of approximately sixty million dollars in taxes failed, and 48

mandamus proceedings of a similar nature which had already been commenced have been discontinued.

The *Williamsburgh Power Plant Corporation* has commenced an action to test the constitutionality of Local Law No. 25 of 1934, the so-called personal property tax law which is a compensating tax imposed by the city to prevent the evasion of the sales tax law by extra-city purchases. It is probable that this case will go to the highest courts.

In *Mendoza Fur Dyeing Works, Inc.,* v. *Taylor,* 247 App. Div. 368, reversed 272 N. Y. 275, December 31, 1936, the City successfully sustained a tax imposed pursuant to the sales tax law upon the sales of chemicals and dyes to fur dyers. The fur dyer contested the tax on the ground that it had purchased the chemicals and dyes for resale.

In *Socony-Vacuum Oil Co.* v. *The City of New York,* 247 App. Div. 163, aff'd 272 N. Y., 668, it was held that the City may not measure the 2% sales tax by that part of the sales price of gasoline which is attributable to the state gasoline tax. The measurement of the tax by that part of the receipts from the sale of gasoline attributable to the Federal gasoline tax remains in force.

In *United Artists Corporation* v. *Taylor,* 248 App. Div. 207, affirmed 273 N. Y. 334, the Appellate Division sustained a sales tax upon the rental by distributors to exhibitors of motion picture films. The significance of the case is two-fold: first, it has established that rentals of tangible personal property are regarded as sales within the meaning of the local sales tax law; second, following various analogous cases, it laid down the proposition that the rental of a film is the rental of tangible personal property. The principal in this case involves taxes of approxiamtely six million dollars.

Procedure. During the year a number of actions have been instituted which will determine important procedural questions.

In *Socony-Vacuum Oil Co.* v. *City of New York,* a declaratory judgment was allowed where an entire regulation was void on its face. However, it is not to be expected that this rule will be extended in other situations.

In *Queens Vending Corporation* v. *City of New York,* N. Y. L. J., July 31, 1935, aff'd 246 App. Div. 594, and in *Harlou, Inc.* v. *Taylor,* aff'd 247 App. Div. 885, motions for injunctions *pendente lite* were denied. Furthermore, in the *Socony* case an injunction was refused.

In *Y. M. C. A. of New York* v. *City of New York,* Special Term, New York County, June 10, 1935, 159 Misc. 539, both an injunction and declaratory judgment were granted. This case is being appealed. The city contends that the proper remedy is the statutory remedy of certiorari, and before the end of 1937 it is expected that this question will be settled.

In *People ex rel. Staten Island* v. *Taylor,* 247 App. Div. 405, it was held that the certiorari proceedings contemplated by the various local laws was the *order* of certiorari under the Civil Practice Act rather than the *writ* of certiorari under the tax law. The importance of this decision lies in the fact that in the first instance the hearings are held before the Comptroller and the order is taken immediately to the Appellate Division.

Exemptions. Numerous applications have been made for exemption by alleged semi-public institutions, and some of these applications have reached the stage of proceedings. There are now pending the actions of the Y. M. C. A., New York University, Columbia University and the Metropolitan Museum of Art, all of which allege that they are semi-public institutions within the meaning of the local laws. It is expected that during the year 1937 these questions will be resolved.

In the *Matter of Gdynia America Line, Inc.,* now pending before the Appellate Division, the legality of the imposition of a tax upon receipts, under the business tax, received by agents for a steamship company as commissions from the sale of tickets for passage and freight charges is being tested. The contention is that the tax imposes a burden on foreign commerce.

In *American League Baseball Club of New York* v. *Taylor,* 248 App. Div. 873, the Appellate Division, First Department, upheld an assessment of a tax under the local gross receipts tax upon receipts received by the American League Baseball Club of New York from games played by its teams outside of the state. The assessment was attacked as being an interference with inter-

state commerce and an extra-territorial tax. The case is now on appeal to the Court of Appeals.

In *Merchants Refrigerating Co., Inc.,* N. Y. L. J., Dec. 26, 1936, the Appellate Division sustained under the local utility tax a 3% tax upon the receipts of refrigerating companies, holding that a refrigerating company, as distinguished from an ordinary storage company, was a utility within the meaning of the local law and, secondly, that there was no discriminatory classification in distinguishing refrigerating storehouses from ordinary warehouses. The Court of Appeals has granted leave to appeal.

Hearings. The emergency tax counsel, in addition to their other work, attend hearings that are held before the Comptroller, pursuant to the various local laws. Such hearings generally involve additional assessments upon individual taxpayers and upon utilities, vendors at retail and general businesses. During 1936 the emergency tax counsel attended 142 such hearings and cross-examined the taxpayer's witnesses so that the record as it goes to the Appellate Division is not unfavorable to the City.

Bankruptcy and Insolvency Claims. Innumerable claims of the City for sales and business taxes have been filed against trustees in bankruptcies or assignees for the benefit of creditors. They involved many legal questions, such as the right of the City to priority over general creditors, the liability of the trustee in bankruptcy for the sales and business taxes, the duties of trustees in searching out the City's claim, setting aside of bar orders, and the right of the Comptroller rather than the Court to determine the amount of the tax. The emergency tax counsel have also had to appear before Referees in Bankruptcy in several hundred hearings during 1936.

In *In Re Leavy,* 85 Fed. (2d) 25, the United States Circuit Court of Appeals has held that the City is entitled to collect the sales tax upon the sale at retail by the auctioneer for the trustee in bankruptcy of the assets of the bankrupt.

The City has been successful in establishing its rights to priority in its claim for sales taxes against a vendor who has made a general assignment for the benefit of creditors and also a bankrupt vendor. This litigation went through the Appellate Divisions of both the First and Second Departments and the Court of Appeals. In the Federal Courts the litigation reached the United

States Supreme Court (*Matter of Atlas Television Co., Inc.*, 248 App. Div. 853, reversed 273 N. Y. 51. *In re Rockaway Paint Centre*, 249 App. Div. 66. *In re Lazaroff*, 84 Fed. (2d) 982, reversed, 57 Sup. Ct. 321 January 20, 1937.

The net result of the priority decisions will be to increase considerably the annual receipts of the City from the sales taxes.

Opinions. The emergency tax division, under the supervision of the head of the Tax Division, has prepared many opinions on all phases of the emergency taxes. Because the taxes are newly imposed, the opinions have required much research in the fields of taxation and constitutional law. In addition, numerous conferences were held and many oral opinions rendered to assist the Comptroller's office in the administration of the various emergency taxes.

TORTS—Frederick v. P. Bryan, Assistant in Charge.

The division defends actions brought against the City and its agencies for injuries to persons or damage to property arising out of the City's manifold activities. Its work includes the defense in the civil and criminal courts of officers and employees of the City in cases arising out of the performance of their duties. The division is the designated agent for the Comptroller in medical and oral examinations of persons presenting claims for personal injuries against the City pursuant to Section 149 of the Charter.

There are three units in the division. The largest, that in the Main Office, covers the Boroughs of Manhattan, Bronx, Queens and Richmond. The work in the Borough of Brooklyn is carried on by the Brooklyn Office, with separate offices in the Brooklyn Municipal Building. The third unit, handles claims and actions against the Independent Subway System and operates from the offices of the Board of Transportation. As traffic upon the City owned subway increases, the work of this unit is growing in importance.

The division has completed its most successful year. It disposed of 4,052 suits. This number is by far the greatest in the history of the Law Department. We have made steady progress in the disposition of litigated matters since January 1, 1934. The number so disposed of in 1936 is approximately three times the

number in 1933. There were 1,409 cases tried in the courts. Other dispositions were made by discontinuances, a large number of which were forced by the City, dismissals for lack of prosecution and settlement. Furthermore, 1,204 claims on which actions had not been started were finally disposed of.

During the year 1936 the results in terms of recoveries against the City are even more gratifying. Plaintiffs in the actions and claims disposed of demanded from the City the sum of $28,283,144, whereas total recoveries against the City were only $505,942. This represented a recovery of approximately 1.78 per cent, the lowest in the history of the department.

In 1933 the amount sued for in cases disposed of was $12,261,054, and the amount paid out by the City was $382,069, or 3.1 per cent. Thus, against an increase of $16,022,090. in plaintiffs' claims, the City has paid out an additional $123,773.

In short, the division has disposed of approximately three times as many lawsuits involving almost two and one-half times as much money as in 1933. Yet the percentage of recovery has been reduced by 1.2 per cent, or more than one-third. For many years past more tort cases have been commenced against the City than completed. One of the reasons is the constant growth of the activities of City government. Opening new streets, construction of public works, extension of parks and playgrounds and the consequent increase in City owned vehicles upon the streets all have expanded the scope of municipal liability. Furthermore, recent statutory enactments have abolished defenses formerly available to a municipality. The result has been a vast increase in the volume of negligence actions brought against it.

The Main Office of the division during the fourth quarter of 1936 disposed of a substantially larger number of actions than were commenced in the same period. During this quarter 536 actions were commenced and 707 were tried, settled or otherwise disposed of. It is hoped that continued progress will be made in this direction and that the Brooklyn office will be brought to a like point, but without an increase in the staff of civil service examiners and law assistants it may not be possible to do so.

The defense of negligence suits requires accurate and thorough work both in and out of court. Trial assistants cannot

achieve satisfactory results without careful and painstaking preparation by the civil service members of our staff. The element of preparation is of prime importance. Accordingly, the division requires that immediate notice be given it of all accidents which might impose liability upon the City. A representative of the division is on the scene as soon as possible. From that point careful investigation is carried on by the examining force in preparation for the eventual trial. Great credit is due this force for the excellent results obtained.

The statistics given above show also that the City is saving large sums because it is a self-insurer. On our thousands of miles of streets upwards of 7,500 City owned vehicles are in daily operation. The annual premiums for liability insurance would be in excess of $1,750,000. Yet the total cost of judgments against the City in 1936, of which those caused by street vehicles were about half, was only one-third of the cost of insurance of 50 per cent of the City's liability.

The ambulance chasing investigation now being carried on demonstrates, once more, that there are large numbers of fraudulent or unfounded negligence actions. Persons engaged in such practices think of the City as fair game. It is the policy of the division to refuse to pay a nuisance value upon claims which are without merit. That policy will continue to be enforced vigorously. The realization by claimants and litigants and their attorneys of this fact leads to the abandonment of many cases.

In carrying out this policy the City is almost unique in the tort field. The results, however, speak for themselves. The ratio of recoveries against the City to the amount sued for is nominal when compared to similar ratios of leading insurance companies, most of which have no such settlement policy. This holds true in spite of the fact that the Tort division suit register of almost 9,000 pending cases is, as far as can be ascertained, in excess of that of the metropolitan division of any insurance company.

The work of the division in the defense of civil suits and criminal proceedings against offices and employees of the City arising out of their performance of duty does not show statistically, but is an important service. Often citizens bring wholly unjustified charges and proceedings against officers and employees who are performing their plain duty. It is the function of the

division to see to it that the police, teachers and other officers and employees are protected against malicious or unfounded cases of this character. The City must stand firmly behind its employees when they are performing their duty. Such backing is essential to the good morale and proper functioning of the departments.

TRANSIT LITIGATION—Charles Blandy, Assistant in Charge.

This division defends actions arising out of subway construction contracts and actions brought on claims for damage to property due to subway and elevated construction or operation.

The cost of maintaining the division is not paid from budgetary appropriations to the law department but from transit funds, the amount being charged to the respective contracts for rapid transit construction as a part of construction costs.

The following, among some of the important cases tried during the year 1936, are typical of the actions dealt with.

Oakdale Contracting Company v. *The City of New York.* Action for damages in excess of three million dollars based on a claim that fraudulent and misleading information with respect to subsoil conditions had been given by the City to a subway contractor. It was also claimed that the City withheld information within its knowledge, concerning such conditions.

Denying the charges made by plaintiff, the City proved that all records were available to the contractor when it made up its bid, and that the contractor was required by the contract to make its own independent investigation. It argued that the plaintiff's claim that quicksand is a material is a relic of remote antiquity, discarded by modern geologists, contractors and engineers, who now view it as a condition instead of a material, capable of being controlled by proper engineering methods.

At one stage the trial, which took over five weeks, developed into a battle of geology, in which experts of national eminence and reputation testified. Twenty-four separate briefs upon different phases of the trial were prepared. The decision has not yet been handed down.

Croce v. *The City of New York & Cornell Contracting Corporation, Ferrara* v. *The City of New York & Cornell Con-*

tracting Corporation.—These cases involved adjoining properties and were tried together. Plaintiffs claimed that they were damaged by the construction of the Independent City-owned Subway. Upon the trial it appeared that the engineers of the contractor and the Board of Transportation had requested permission to enter the plaintiffs' premises for the purpose of protecting them, and that the plaintiffs had refused to give the contractor such permission.

The actions were of particular importance because of other pending litigation of the same type, and because of the holding of the court, Conway, J., who dismissed the complaints, that it is the duty of one who may bring an action for damages to minimize it. He ruled in effect that plaintiffs may themselves refuse to underpin and protect, and also refuse to permit underpinning and protection by another, but that the old doctrine that a man's home is his castle may not be invoked to impede the construction of a great public improveent.

The Arthur A. Johnson Corporation v. *The City of New York*.—Action for $381,854 damages and additional compensation by a subway contractor, arising out of a contract for the construction of a subway section. Plaintiff contended, in the main controversy, that a certain Board of Transportation drawing, purporting to set forth the result of test borings, led it to believe that it would encounter sand, clay and gravel only, whereas, in fact, it unexpectedly found hardpan, a substance more difficult and expensive to excavate, increasing its excavation costs by $253,287.

The Trial Court dismissed this claim on the merits. The case is noteworthy because the contractor sought to impose upon the City the risk of correctly determining the nature of the subsurface materials to be encountered in the prosecution of the work. The Trial Court held that the contract provisions placed that risk upon the contractor, unless the City was guilty of bad faith, fraud or negligence of a degree "sufficient to brand it as the equivalent of fraud or bad faith." The Court further stated that the contractor had the right to make an independent examination of the locus if it so desired, and that, if it felt that the time was too limited for such an examination, it could refrain from bidding; on the other hand, if it chose to take its chances and bid, it must accept the risk. An appeal is pending.

WATER SUPPLY—George S. Parsons, Assistant in Charge.

The work of the division was concentrated, during the first eight months of the year, upon an effort to dispose of:

1. An accumulation of untried claims against the City for damages due to the diversion of the Schoharie Creek and the induction of its waters into the Esopus Creek in connection with the Catskill water projects; and

2. Numerous untried writs of certiorari obtained by the City to review tax assessments against the City's water supply properties in various Ulster, Putnam, Westchester, and Nassau County towns or villages, many of which writs dated back as far as 1915.

A condemnation commission which had been appointed and qualified in December, 1935, began taking testimony early in 1936 relative to Schoharie Creek diversion claims and was convened during the year as frequently as was permitted by the limited cooperation given by claimants' attorneys. Despite this factor and other retarding influences, it has been possible to present to the commission for is determination all but 12 of these previously untried claims.

The efforts of the division to comply with a mandamus order to convene a commission to hear claims arising out of the induction of Schoharie waters into Esopus Creek, and to fix compensation, met with objections, all of which were disposed of at Special Term in the Third Department, with the exception of those raised by New York Central Railroad Company, the owner of various right-of-way parcels. The Railroad Company asserted that the right sought by the City could not be condemned without a precedent attempt at adjustment by the Board of Estimate and Apportionment; and, further, that the City's maps were defective in failing to show a relocation of the railroad's right-of-way. The City prevailed at Special Term, Third Department in February. That determination was reversed by the Appellate Division, Third Department in April. Prompt action brought about a unanimous reversal of the Appellate Division in the Court of Appeals, in July, 1936, success finally crowning the City's efforts.

In the meantime, the Esopus Commission had been appointed and has disposed of 25 per cent of the claims by trial and settlement.

Similarly, the number of untried certiorari cases has been reduced from over 300 to 210. Settlements entered into during the year with the City of Yonkers and the Towns of Hurley, Marbletown, Greenburg, Valley Stream, Phillipstown and Kent—some of which are not yet fully carried into effect—will, when completed, dispose of over 100 more previously untried proceedings and result in the refunding to the City of about $100,000 in excess payments and an annual saving of $30,000 in taxes. Other similar settlements are in process of negotiation.

In order to effectuate a settlement made during the preceding year with the Town of Southeast concerning excess taxes paid by the City in past years, amendatory legislation had to be obtained. As a result, the City received payment of $60,000 in June, 1936 for such excess taxation.

Hearings have been conducted in connection with the trial of contested proceedings before various referees and other proceedings prosecuted to reference during the year.

Argument in the Appellate Division, Third Department, is expected to occur early in the coming year in the appeal of the Town of Olive from the decision of Mr. Justice Schenck at Special Term, in favor of the City in respect to the 1930 Olive proceeding.

The division made assessments protests in behalf of the City in 28 towns and villages and obtained new writs of certiorari in 9 towns and villages.

Objections were filed and appearances made in 180 proceedings before the Water Power and Control Commission relative to applications to withdraw subterranean waters in Kings, Queens and Nassau Counties, the appeals in certiorari previously taken from decisions affecting the City's "Layne Wells" were prepared and are ready for argument, in addition to passing upon cases on appeal made up by New York Water Service Corporation.

During the year 113 legislative bills were examined and commented upon and eight statutes were prepared and later became laws. One of them reduced by about 86 per cent the expense of advertising in water supply condemnation proceedings; others legalized the making of contracts with various towns for sewage disposal systems to protect the City's water supply.

Following the action of the Board of Estimate and Apportionment on June 5, 1936, in authorizing issuance of $17,500,000 corporate stock to commence work upon the Delaware Water Supply Project, the activity of the division has been greatly increased and extended.

The vast amount of work entailed by the condemnation of 87 miles of underground tunnel easements, shaft sites, dam sites, surface road and drainage easements, involving six separate condemnation proceedings in two judicial districts and five counties, has called for prompt and effective organization. We obtained authority to appoint three additional counsel, a clerk, a stenographer, and two title examiners. The new associate Assistants Corporation Counsel are:

Henry R. Bright (previously in charge of the Affirmative Division and now at the head of the Kingston office);

Theodore R. Lee and Henry J. Rusk (in charge of title examinations).

The new clerical position was filled by the appointment of John D. Egan, a resident of Kingston, New York, and employed in that office.

The legal steps progressed so well that on November 14, 1936, the City acquired title to the entire new line extending from the Lackawack dam-site in Western Ulster County to the City's existing Hill View Reservoir in Yonkers. At the end of November all of the commissions had been organized and were ready to proceed with the hearing of claims, some of which had begun as the year ended.

The Kingston office has been remodelled and re-equipped; a new office organized at White Plains for the handling of the matters before three Westchester County commissions; re-arrangement of the New York City office has been begun and plans have been made to facilitate hearings of Putnam, Dutchess and Orange County claims by using county court house facilities in the various county seats.

The work of preparing for trials before the various commissions has been divided and assigned as follows:

Commissions 1, 2 and 3 (covering Westchester County):
Colonel L. S. Breckinridge, assisted by Mr. Lee;

Commission 4 (Putnam, Dutchess and Orange Counties):
Messrs. John D. Van Wagoner and John Suglia;

Commissions 5 and 6 (Ulster County):
Mr. Henry R. Bright, assisted by Mr. John E. Egan.

Title examinations and certifications, and obtaining orders for possession:
In charge of Mr. Henry J. Rusk, assisted by Mr. John E. Egan

General supervision, including contact and conference with the Board of Water Supply and the Department of Water Supply, Gas and Electricity:
Mr. Parsons.

In addition to the duties above referred to the division has, during the year replied to 116 inquiries from various City departments relating to water supply questions and made and reported upon various special studies and investigations for the Corporation Counsel.

WORKMEN'S COMPENSATION DIVISION—Samuel A. Bloom, Deputy Assistant Corporation Counsel in Charge.

Statistical data submitted herewith shows a slight increase in medical expenses caused by the wider application of L. 1935, chapter 258, shifting the right to select a physician, hospital and other medical services from the employer to the employee. This office made more detailed physical examinations and audited the medical bills with the utmost care in order to control the increase in medical costs arising from this change.

Total payments for disability and death benefits in 1936 were $811,937.77, of which $646,103.48 was for disability and $165,834.29 for death benefits. On accidents which occurred prior to January 1, 1934, $203,648.44 was paid, of which $69,395.22 was for disability and $134,253.22 for death benefits. $123,574.18 was paid for accidents which occurred during 1934, of which $110,487.26 was for disability and $13,086.92 for death benefits. $275,266.96 was paid for accidents which occurred during 1935, of which $260,178.04 was for disability and $15,088.92 for death benefits. $209,448.19 was paid for accidents which occurred

during 1936, of which $206,042.96 was for disability and $3,405.23 for death benefits. It is to be observed that approximately 25% of the money spent for disability and death payments were on cases which arose prior to January 1, 1934.

The policy of the City in not taking out Workmen's Compensation Insurance has been amply justified as in previous years. It enables us to give better treatment to injured employees and at the same time the City saves money. As an example: Workmen's Compensation insurance on certain selected groups of employees in Plant and Structures, namely: bridge painters, steel and iron workers would cost approximately $264,000 a year. Against this figure our cost to Plant and Structures covering all classes of employees for the year 1936 was $63,612.

Total medical expenditures in 1936 were $165,212.76 of which $122,244.69 related to 1936 and the balance to prior years. Medical bills still outstanding are: 1936, $15,030; 1935, $9,724; 1925-1934, $1,270. Payment has been withheld in certain cases for the purpose of determining whether or not the injured were employees covered by the Workmen's Compensation Law, or whether or not the treatment claimed to have been rendered was necessary and proper.

One year ago there remained unpaid $50,400.82 for medical treatment claimed to have been rendered prior to January 1, 1934. $37,773.61 thereof has been examined and marked cancelled and not payable. In a test case brought by a physician whose claims aggregated approximately $12,000, it was determined by the courts that his contract was unenforceable because there was no proper written proof that he had been retained by any one in authority to bind the City of New York. The only proof adduced by him was that he had been orally engaged, and that such practice was a prevalent one and theretofore recognized by prior payments of large sums of money to him.

Medical costs were kept down to 16.9% of the total compensation costs; yet, everything was done to provide the best medical care that could be obtained. Of the total amount paid out 83.1% went to the injured employee or his family.

In the 1935 Annual Report it was stated that a system had been inaugurated to determine the gross and percentage compensation cost of each City department. The results so shown have

been sent to the respective departments. This is the first time that department heads have been advised directly of the compensation cost of their departments. From the replies already received it is evident that department heads will cooperate in an effort to reduce the number of accidents.

The old idea that injuries are unavoidable, consequently resulting in a failure to take ordinary precautions, has now been changed to a realization that few accidents are actually due to hazards inherent in the employment. These results prove that safety can be sold to employees on the theory that both the City and the injured employee lose in an accident. The City loses when it pays out money and receives no service in return, and the employee loses part of his salary, endures pain and hazards the risk of total mental and physical disability. Preventive measures are essential features of a sound workmen's compensation policy.

LIBRARY—Augustine H. Matthews, Librarian.

During 1936 our library was increased by 1,017 volumes, one of the largest additions made in a single year. As law books are the tools with which attorneys must work, true economy requires that this department be equipped to meet the demands of its staff promptly. The work of the department is growing not only in volume but in scope because of the emergency tax laws and the activities of various authorities. Last year and this year the purchases of reports, digests and text books kept pace with the department's growing needs.

The library now comprises 12,492 volumes in addition to unbound pamphlets and advance sheets, to wit:

Classification	*Volumes*
Reports	7,398
Statutes	932
Digests and Citations	729
Text books and Miscellany	1,160
Public Documents	233
Cases and Points	2,040
	12,492

As in 1935, many of the new books were allocated to the library of the Brooklyn office and the divisional offices in the main office. Some additions were made for the office in the De Witt Clinton Hotel in Albany.

Throughout the year the library was used frequently by accredited members of other departments and constantly by the Board of Statutory Consolidation. This board is continuing the work of codifying laws relating to the City of New York, begun in 1935 by the Charter Revision Commission. At the request of the Civil Service Commission our library was used for a few civil service examinations which involved legal questions.

The WPA project for digesting opinions of the Corporation Counsel of previous years has been continued and is approaching completion. Two volumes of opinions were published in 1936 and two more will be on our shelves within a few months. A cumulative digest covering all opinions rendered during the years 1914 to 1934 is in course of preparation. These publications will be of great service to the department, making it possible to trace rapidly opinions of the Corporation Counsel rendered in previous years and previous administrations.

CHIEF CLERK'S OFFICE—Walter E. Dunn, Chief Clerk.

In order to maintain the morale of the staff and to meet the increased volume of work, it has been our policy to make every promotion possible. Additional Civil Service legal positions were created and filled by promotion. Following this, 16 Grade 2 clerks were promoted to legal positions and their places taken by Grade 1 clerks, and as they were unfamiliar with our records and methods, additional strain was placed upon the already burdened Clerk's Office. Little relief was granted in the 1937 budget, although asked for in the departmental request. The condition is one which should not be permitted to continue indefinitely.

Civil Service. During the year 8 exempt positions heretofore excepted from examination under Rule V, Section 9, Paragraph 9a of the Rules of the Municipal Civil Service Commission were re-

classified and placed in the competitive service, 6 of them taking the title of Associate Assistant Corporation Counsel, established last year.

The demand for printed forms, form letters, memos, motions and notices in various proceedings and other items assumed such volume as to be a heavy drain on our funds. In many instances, the need for immediate delivery added to the expense. Copies of court opinions and opinions to the Board of Estimate and Apportionment became so numerous as to overload the stenographic department.

To meet this situation an electrically operated mimeograph machine was purchased with the following results: From a total of 793 master sheets approximately 100,000 pages of notices, forms, cards, letters, etc., were produced. Resulting savings have more than covered the cost of the machine.

For many years the Finance Department has transmitted to the Law Department, at weekly intervals, checks for the support of deserted wives and children. These checks were deposited in our bank and our checks drawn to the Court of Domestic Relations. Official receipts on financial stationery costing about 10 cents each were filled out and sent to the Finance Department. This procedure caused delay in the receipt of payments by wives and children, duplicated clerical work and cost $1,000 a year for stationery.

This practice has been abandoned. The Finance Department now accepts our statement as a receipt and checks are made out to the Domestic Relations Court direct, thus obviating the delay and expense of passing through our bank.

W.P.A. Projects. The W.P.A. Projects have progressed satisfactorily. Indices made for the library have been referred to in Mr. Matthews' report. Other matters covered by the projects are; a digest of Civil Service decisions not published in the law reports; a similar digest of election cases; a new card index for some 37,000 real estate certiorari proceedings; physical inventories of cases in divisional files with card indices for several divisions; filing and indexing old papers, as well as giving assistance in miscellaneous matters to clear up arrears of work found on the Department's books.

Personnel and Office Administration

We continue to be very much in need of office space. This has been discussed for three years and our staff is as cramped as ever, seriously interfering with its work. What the department really needs is another floor immediately adjoining those now in use. The necessity for constant use of the library and central clerical and stenographic forces makes it impracticable to scatter groups of our staff on distant floors even though in the same building.

During the year we substituted the division of Claims and Judgments in place of the former division of Affirmative Actions in the interest of better administration. The new division retains jurisdiction of affirmative claims not exceeding $3,000. and of all welfare claims and cases involving testamentary dispositions in favor of the City or any of its departments. Other functions of the former division of Affirmative Actions have been assigned to other divisions together with some of the personnel.

We still lack clerks and law clerks and have had little relief, despite annual requests. To grant the request would be an economy and not an expense. It seems foolish to require trial attorneys, at substantial salaries, to spend their time searching for records, conducting preliminary interviews with witnesses and doing other routine work. In the division of General Litigation we have no clerk and but one law clerk to assist eight trial assistants. Such a set-up would not be tolerated in a private law office. When the new charter goes into effect the line between our tax levy employees and our street openings employees will be erased giving greater flexibility in the distribution and use of the staff. However, this will be insufficient to meet present conditions. If the efficiency of the force is to be maintained, a reasonable number of Grade 1 and Grade 2 clerks and Grade 1 and Grade 2 law assistants should be added as soon as possible.

To give adequate recognition to those who have labored faithfully to make the record of the past year would require a personal reference to every member of the staff. They have all given devoted service to the City.

I wish to express my particular obligation to the two assistants, the nature of whose service has been somewhat personal to me: to Mr. William C. Chanler, First Assistant Corporation Counsel, for extraordinarily effective aid in all aspects of our work and for the great ability with which he has directed the department when called on to do so; and to Mr. Arthur L. Marvin, the Executive Assistant. His efficient conduct of the executive operations of the department is attested by the fact that I have so rarely been troubled with the burdens of routine administration.

Respectfully submitted,

PAUL WINDELS,

Corporation Counsel.

APPOINTMENTS OF THE CORPORATION COUNSEL

1936

(In order of appointment)

ELIZABETH ROGERS HORAN:

Vassar College, A.B.; Yale Law School, LL.B.; formerly Assistant Legal Advisor in the U. S. Department of State; Assistant United States Attorney S.D.N.Y. 1934 to 1936.

BERNARD NEWMAN:

New York University, B.S.; New York University Law School, LL.B.; associate editor New York University Law Review; formerly in private practice.

HENRY J. RUSK:

New York Law School, LL.B., 1903. District Attorney of Putnam County, 1909 to 1917. Acting Surrogate, Putnam County. Assistant Solicitor New York Title and Mortgage Company. Real Estate Division, Attorney General's Office 1921 — 1932.

THEODORE R. LEE:

Oklahoma University 1923 to 1925. Columbia College, A.B. 1927. Columbia Law School LL.B. 1930. Research work Wickersham Commission 1930. Graham & Reynolds 1931. New York Title and Mortgage Co., Law Dept. 1932-1933. Department of Insurance, Rehabilitation Bureau 1933-1935. Stewart and Shearer 1935-1936.

JAMES HALL PROTHERO:

University of Pennsylvania, A.B.; Temple University School of Law, LL.B.; formerly Professor of Equity and Agency in the Temple School of Law; associated with Hon. Samuel Seabury as member of Transit Unification Staff of the City.

RANDOLPH J. HERNANDEZ:

Washington & Lee University, Brooklyn Law School, LL.B.; formerly in the Law Department of the New York Title and Mortgage Co. and private practice.

MARK S. MATTHEWS:

Columbia College, A.B., 1928; Columbia Law School, LL.B., 1930; formerly with Mitchell, Taylor, Capron & Marsh and Barber, Fackenthal & Giddings.

ADMIRALTY DIVISION

	Year 1936
Actions tried in court	15
Actions before Referees or Masters	6
Miscellaneous hearings	39
Motions argued or submitted	5
Actions and claims settled	29
Damage claimed in actions and claims settled	$55,473.33
Damages allowed in actions and claims settled	$31,913.77
Briefs prepared	6
Pleadings and motion papers prepared	23
Opinions prepared	85
Letters prepared	510
Actions pending at beginning of year	42
Actions begun during year	18
Actions terminated during year	21
Actions pending at end of year	39
Damages claimed in actions pending at beginning of year	$130,764.95
Damages claimed in actions begun	$92,516.00
Damages claimed in actions terminated	$53,327.42
Damages claimed in actions pending at end of year	$169,953.53
Total amount recovered in all actions tried and settled	$31,913.77
Percentage of recovery in actions against city	33-1/3%
Percentage of recovery in affirmative actions	90%

APPEALS DIVISION

Appeals argued in Circuit Court of Appeals	4
Appeals argued in Court of Appeals	42
Appeals argued in Appellate Division	188
Appeals argued in other courts	60
Motions argued or submitted	225
Briefs prepared	497
Pleadings and motion papers prepared	225
Opinions prepared	61
Returns prepared	50
Appeals dismissed or withdrawn on consent	197

DIVISION OF CLAIMS AND JUDGMENTS

Actions tried in court	484
Actions before Referees or Masters	60
Miscellaneous hearings	60
Motions argued or submitted	180
Briefs prepared	176
Pleadings and motion papers prepared	1,100
Opinions prepared	104
Letters prepared	5,112
Collections in actions and claims	$318,916.15
Executions issued	632
Supplementary proceedings commenced	80
Supplementary proceedings terminated	12
Number of Judgments collected	320

	Year 1936
Amount of Judgments collected	$47,742.88
Total amount collected	336,659.03
Actions pending at beginning of year	208
Actions begun during year	507
Actions terminated during year	280
Actions pending at end of year	435
Damages claimed in claims and actions pending at beginning of year	$7,769,949.29
Damages claimed in actions begun	115,350.39
Damages claimed in actions terminated	454,822.95
Damages claimed in actions pending at end of year	$7,430,476.73

CONTRACT DIVISION

Appeals argued	19
Actions tried in court	68
Actions discontinued or dismissed by motion	67
Briefs prepared	133
Pleadings and motion papers prepared	282
Opinions prepared	710
Contracts approved as to form	2,234
Other instruments drafted or approved	475
Advertisements for bids approved	1,659
Actions pending at beginning of year	348
Actions begun during year	119
Actions terminated during year	168
Actions pending at end of year	299
Damages claimed in actions pending at beginning of year	$6,651,424.48
Damages claimed in actions begun	3,489.958.15
Damages claimed in actions terminated	2,636,330.48
Damages claimed in actions pending at end of year	7,954,353.90
Total amount recovered in all actions tried, settled, etc	217,474.62
Percentage of recovery	8.2%

FRANCHISE DIVISION

Appeals argued	16
Actions tried in court	2
Actions before Referees or Masters	1
Hearings before Public Service Commission	140
Hearings before Transit Commission	52
Miscellaneous hearings	31
Motions argued or submitted	46
Briefs prepared	65
Pleadings and motion paper prepared	43
Opinions prepared	60
Letters prepared	415
Franchise contracts approved	19
Agreements and other instruments drafted or approved	151
Records on appeal prepared	13
Legislative bills drafted or revised	5

	Year 1936
Actions pending at beginning of year	40
Actions begun during year	26
Actions terminated during year	19
Actions pending at end of year	47

DIVISION OF GENERAL LITIGATION

Appeals argued	15
Actions tried in court	31
Miscellaneous hearings	70
Motions argued or submitted	486
Briefs prepared	513
Pleadings and motion papers prepared	900
Opinions prepared	1,549
Legislative bills drafted or revised	6
Ordinances drafted	3
Contracts approved as to form	15
Bonds and other instruments drafted or approved	1,654
Letters prepared	490
Actions and proceedings pending at beginning of year	561
Actions and proceedings begun during year	1,021
Actions and proceedings terminated during year	810
Actions and proceedings pending at end of year	772
Prevailing rate of wage actions—held pending outcome of test cases	2,600
Damages claimed in actions pending at beginning of year	$1,892,929.89
Damages claimed in actions begun	$372,499.78
Damages claimed in actions terminated	$199,940.18
Damages claimed in actions pending at end of year	$2,065,489.49
Total amount recovered in all actions tried and settled	$10,296.80
Percentage of recovery	.051

LEGISLATIVE DIVISION

State Legislature:

Bills introduced in Senate	2,189
Bills reprinted in Senate	704
Bills introduced in Assembly	2,317
Bills reprinted in Assembly	753
Bills introduced in both branches	4,506
Bills reprinted in both branches	1,457
Bills considered—Total	5,963
Bills passed by both branches	1,176
Bills approved by Governor which became laws	947
Bills vetoed by Governor	218
Bills recalled from Governor	12
Special City Bills introduced	53
Special City Bills passed	34
Special City Bills vetoed by Governor	0
Special City Bills approved by Governor which became laws	34

Municipal Assembly	Year 1936
Bills introduced in Board of Estimate and Apportionment	95
Bills reprinted in Board of Estimate and Apportionment	18
Bills introduced in Board of Aldermen	234
Bills reprinted in Board of Aldermen	3
Bills introduced in both branches	329
Bills reprinted in both branches	21
Bills considered—Total	350
Bills passed by both branches	73
Bills recalled from Mayor	1
Bills approved by Mayor which became local laws	61
Bills vetoed by Mayor	9
Bills repassed over Mayor's veto	1
Bills which became local laws—Total	62

Board of Aldermen

Proposed ordinances introduced	100
Proposed ordinances passed	34
Proposed ordinances recalled from Mayor	1
Proposed ordinances passed and recommitted	1
Proposed ordinances approved by Mayor which became law	22
Proposed ordinances vetoed by Mayor	9

DIVISION OF PENALTIES

Briefs prepared		214
Opinions prepared		80
Lis Pendens Filed		406
Judgments entered in favor of the City in the Municipal Courts		251
Amount of judgments entered in favor of the City in the Municipal Courts		$4,800.07
Municipal Term fines paid	$6,467.55	
Penalty actions settled	$30,584.87	
Collected on disbursements on unsafe buildings	$25,835.82	
Moneys collected on behalf of the Dept. of Public Welfare re paternity cases	$11,089.48	
Moneys collected for the Family Court	$4,854.22	
Moneys collected through the Bureau of Penalties		$78,831.94
Actions pending at beginning of year		4,020
Actions pending at end of year		2,563

REAL ESTATE DIVISION

Bureau of Street Openings

Appeals argued	42
Proceedings tried in Court	53
Proceedings tried before Referees or Commissioners	26
Miscellaneous hearings	222
Motions argued or submitted	447
Briefs prepared	190
Letters prepared	1,400
Final decrees filed and reports of Commissioners confirmed	80

	Year 1936
Total awards therein	$23,708,838.04
Total assessments therein	$9,397,012.04
Approximate miles acquired	78.22
Tentative decrees and preliminary abstracts filed	85
Total awards therein	$27,662,057.38
Total assessments therein	$15,764,323.63
Bill of costs filed	203
Orders entered	287
Objections filed	1,641

REAL ESTATE DIVISION

(Title Examinations)

Actions tried in court	11
Proceedings before Referees	112
Miscellaneous hearings	139
Motions argued or submitted	880
Briefs prepared	102
Letters prepared	3,020
Conveyances drawn	57
Titles closed	134
Abstracts of title prepared	12,861
Titles in proceedings certified	37,716
Instruments approved	287
Orders entered	102
Orders approved	759
Depositions	104
Legislative bills drafted	86
Pleadings drafted	142
Leases drafted	75
Leases approved	180
Requisitions received	296
Searches completed	292
Short period searches—completed	1,294
Mortgage foreclosure examinations—completed	31
Tax lien foreclosure examinations—completed	181
Slum clearance examinations—completed	489
Mortgage foreclosure actions—completed	45
Unknown owner searches—completed	677

REAL ESTATE DIVISION

(Condemnation Bureau)

Appeals argued	17
Condemnations proceedings tried in court	24
Other actions tried in court	9
Trials before Referees	1
Miscellaneous hearings	71
Motions argued or submitted	134
Briefs prepared	97

	Year 1936
Pleadings and motion papers prepared	104
Opinions prepared	37
Letters prepared	871
Petitions, findings, judgments, stipulations, etc., drafted	656
Cases on appeal prepared	11
Leases, releases, satisfactions and assignments of mortgages drafted	28
Agreements drafted	33
Hearings before Board of Assessors	25

DIVISION OF TAXES

Appeals argued	30
Tax Certiorari' proceedings tried in court	90
Motions argued or submitted	948
Briefs prepared	311
Opinions prepared	911
Returns prepared	1,877
Reports as to legislative bills	13
Tax Certiorari—R.E.—pending at beginning of year	34,522
Tax Certiorari—R.E.—begun during year	6,245
Tax Certiorari—R.E.—terminated during year	3,550
Tax Certiorari—R.E.—pending at end of year	37,217
Assessments involved in all proceedings terminated during year	$2,317,160,580
Reductions in assessments obtained or allowed	$20,068,641
Percentage of reductions of assessments	.00 866

DIVISION OF TORT LITIGATION

(Manhattan-Bronx-Brooklyn-Richmond-Queens
—and—
Independent Subway System)

	Year 1936
Actions tried in court	1,409
Motions argued or submitted	1,154
Briefs prepared	678
Pleadings and motion papers prepared	4,245
Opinions prepared	1,610
Letters prepared	3,862
Property Clerk cases disposed of	57
Reports of accidents received and read from city departments	46,485
Oral examinations of claimants	3,806
Actions begun during year	2,180
Actions terminated during year	3,138
Damages claimed in actions terminated	$21,053,859.99
Total amount recovered in all actions tried and settled	$505,842.77
Claims barred by Statute of Limitation	1,204
Damages claimed in claims disposed of	$7,229,284.02
Total claims and actions disposed of	4,052
Total amount claimed in claims and actions disposed of	$28,283,144.01
Percentage of recovery	1.78%

DIVISION OF TRANSIT LITIGATION	Year 1936
Appeals argued	4
Actions tried in court	15
Motions argued or submitted	41
Briefs prepared	92
Pleadings and motion papers prepared	50
Opinions prepared	28
Letters prepared	475
Actions pending at beginning of year	354
Actions begun during year	42
Actions terminated during year	53
Actions pending at end of year	343
Damages claimed in actions pending at beginning of year	$13,832,621.61
Damages claimed in actions begun	$4,661,393.51
Damages claimed in actions terminated	$3,480,969.11
Damages claimed in actions pending at end of year	$15,013,046.01
Total amount recovered in all actions tried and settled	$435,306.30
Percentage of recovery	11.2%

WATER SUPPLY DIVISION

Appeals argued	2
Actions tried in court	2
Actions before Commissioners or Referees	10
Hearings before Commissioners of Referees	85
Miscellaneous hearings	183
Motions argued or submitted	34
Briefs prepared	17
Pleadings and motion papers prepared	186
Opinions prepared	33
Other legal papers drafted or approved	20
Legislative bills examined	115
Actions pending at beginning of year	215
Actions begun during year	18
Actions terminated during year	34
Actions pending at end of year	199

CLERICAL DIVISION

New Actions and Proceedings entered in Registers	18,955
Total Bills of Costs taxed	727
Number of City's Bills	563
Amount of City's Bills	$46,124.25
Number of Bills against the City	164
Amount of Bills against the City	$22,330.43
Court orders entered	2,168
Judgments in favor of City entered	1,076
Amount of Judgments in favor of City	$392,970.78
Judgments entered against the City	673
Amount of Judgments entered against the City	$1,206,662.87
City Appeals prepared, compared and printed	143
Cases on Appeal in which City was respondent compared and waiver signed	238

Vouchers audited and certified for payment	1,260
Communications received (exclusive of correspondence in litigated matters)	24,050
Communications sent out	23,284
Pages of Communications sent out	32,137
Folios of Stenography typewritten	660,134
Folios of Typewriting not dictated	126,120
Papers served by Process Servers and Messengers	22,660
Total number of letters mailed during the year	45,743

These figures do not include clerical items handled by the Bureau of Penalties or the Brooklyn Office.

WORKMEN'S COMPENSATION DIVISION

Number of Claims Filed	9,805
Hearings Before Industrial Board	11,043
Cases Closed (Not Including Those at Informal Hearings)	4,700
Physical Examinations	6,642

DISABILITY AND DEATH PAYMENTS DURING 1936:

	Disability	Death	Total
Accidents prior to Jan. 1, 1934	$69,395.22	$134,253.22	$203,648.44
Accidents during 1934	110,487.26	13,086.92	123,574.18
Accidents during 1935	260,178.04	15,088.92	275,266.96
Accidents during 1936	206,042.96	3,405.23	209,448.19
Total Disability and Death Payments	$646,103.48	$165,834.29	$811,937.77

MEDICAL BILLS PAID DURING 1936:

Current (1936) Bills Paid	$122,244.69		
Current (1936) Bills Unpaid		$15,030.06	
Total 1936 Medical Costs			$137,274.75
1935 Bills Paid in 1936 (This includes bills rendered in 1936 for medical treatment in 1935)	29,485.00		
1935 Bills Still Unpaid		9,724.47	
Total 1935 Medical Costs			39,209.47
1934 Bills Paid in 1936 (This includes bills rendered in 1935 and 1936 for medical treatment in 1934)	2,126.34		
Payments Made for Medical Services Rendered Prior to 1934	11,356.73		
Total Medical Disbursements for Current Year (1936)	$165,212.76		

MEDICAL BILLS FOR SERVICES RENDERED 1925-1934:

Outstanding Bills on Dec. 30, 1935		$50,400.82
Payments Made During 1936	$11,356.73	
Cancelled, as Unproved and Unauthorized	37,773.61	
Outstanding Medical Bills on Dec. 31, 1936	1,270.48	
	$50,400.82	

RECAPITULATION

Total Compensation Paid in 1936	$811,937.77	83.1%
Total Medical Payments Made in 1936	165,212.76	16.9%
Total	$977,150.53	100.0%
Total Compensation Payments for 1936 Cases	209,448.19	60.4%
Total Medical Costs for 1936 Cases	137,274.75	39.6%
Total	$346,722.94	100.0%

Average Disability Cost for 1934 Cases Paid in 1936	$13.48
Average Disability Cost for 1935 Cases Paid in 1936	27.32
Average Disability Cost for 1936 Cases	21.36
Average Medical Cost for 1934 Cases Paid in 1936	.23
Average Medical Cost for 1935 Cases Paid in 1936	2.93
Average Medical Cost for 1936 Cases	12.47

REPORT OF MEDICAL DISBURSEMENTS FOR THE YEAR 1936 COVERING MEDICAL TREATMENT RENDERED IN 1935 & 1936

WORKMEN'S COMPENSATION CLAIMS

Department	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Yearly Totals
Sanitation	$23,139.32	$18,722.12	$14,144.21	$19,640.66	$75,646.31
Parks	2,146.23	1,639,60	3,983.82	3,451.78	11,221.43
W. S. G. & E.	2,516.35	1,520.76	2,294.18	2,825.74	9,157.03
Pres. Man.	4,190.59	2,176,04	1,718.60	931.95	9,017.18
Hospitals	1,699.77	2,037.37	1,522.12	2,571.73	7,830.99
Pres. Queens	779.28	1,026.59	1,474.85	2,214.10	5,494.82
P. & S.	1,414,01	1,161.19	1,174.30	1,594.68	5,344.18
Education*	661.98	1,183.78	839.50	830.80	3,516.06
Pres. Bklyn.	1,469.70	683.00	372.05	709.27	3,234.02
Docks	568.64	750,75	953.00	509.16	2,781.55
Pres. Bronx	483.55	838.50	739.80	544.58	2,606.43
Correction	500.90	630.35	540.75	198.00	1,870.00
Pres. Richmond	311.75	172.00	352.30	599.35	1,435.40
Police	39.75	566.50	343.60	130.95	1,080.80
Fire	52.10	280.75	243.00	106.56	682.41
Transportation*	79.55	122.90	10.12	275.10	487.67
Health	10.00	391.15	41.00		422.15
Purchase	113.00	50.70	42.60	202.00	408.30
Public Welfare	167.95	29.56	81.00	53.72	332.23
Higher Education*		29.60	102.00		131.60
Markets	13.50	14.25		98.50	126.25
Finance			74.00		74.00
Bd. Water Supply*		55.00		12.60	67.60
Medical Examiner				39.00	39.00
Law		8.00			8.00
Supplies		156.44	264.78	23.05	444.27
	40,357.92	34,246.90	31,311.58	37,563.28	143,479.68
Doctors' Salaries	2,125.00	2,125.01	1,875.00	2,124.99	8,250.00
Total	42,482.92	36,371.91	33,186.58	39,688.77	151,729.68

MEDICAL BILLS FOR SERVICES PRIOR TO JANUARY 1ST, 1934

Outstanding Jan. 1, 1936	$50,400.82	
Not to be Paid: Unauthorized & TERA		37,773.61
Paid in 1936		11,356.73
Outstanding Jan. 1, 1937		1,270.48

* Paid out of respective departments' budgetary appropriation.

MEDICAL BILLS FOR SERVICES DURING 1934 PAID IN 1936	$2,126.34

TOTAL MEDICAL PAYMENTS—1936

Current Payments	151,729.68
Prior to Jan. 1, 1934	11,356.73
Jan. 1st to Dec. 31, 1934	2,126.34
Total	$165,212.75

Vouchers Drawn, 5,062.

DISTRIBUTION OF COMPENSATION PAYMENTS FOR PERIOD JANUARY 1, 1936 TO DECEMBER 31, 1936, INC.

Department	Amount
*Higher Education	$1,550.58
*Education	21,236.25
Boro. Pres. Bronx	14,151.88
Boro. Pres. Brooklyn	17,894.31
Boro. Pres. Manhattan	32,028.83
Boro. Pres. Queens	26,775.12
Boro. Pres. Richmond	7,302.69
Correction	12,580.10
Docks	5,829.59
Fire	4,341.84
Health	3,391.51
Hospitals	73,385.75
Parks, Bronx	12,114.70
Parks, Brooklyn	10,778.54
Parks, Manhattan	14,549.88
Parks, Richmond	1,223.82
Parks, Queens	4,011.46
Plant & Structures	58,267.84
Police	1,808.33
Public Markets	610.95
Purchase	2,916.34
Sanitation	431,243.02
W. S. G. & E.	35,452.81
T. E. R. A. (Non-Relief)	7,138.11
B. W. S.	1,082,78
*Transportation	7,022.12
Bronx Parkway Commission	450.06
City Mag. Court	540.02
Sheriff Bronx County	1,028.95
Public Welfare	689.57
Finance	540.02
TOTAL	$811,937.77

* Paid out of respective departments budgetary appropriation.

Pending Litigation

	Actions Pending Beginning Of Year	Commenced During Year	Terminated During Year	Pending End of Year
UNASSIGNED—				
Against City				
Summons only—Supreme Court	110	60	33	137
Summons only—City Court	17	8	4	21
Total	127	68	37	158
MAIN OFFICE—				
Against City				
Summons only—Supreme Court	245	66	60	251
Summons only—City Court	24	20	23	21
Prevailing Rate of Wages Actions	3,116	279	17	3,378
Suspension Actions	32	....	....	32
Salary Actions—Supreme, U. S. District and City Court	182	6	7	181
Salary Actions—Municipal Court	36	6	3	39
Services and Fees	68	10	6	72
Breach of Contract	260	9	12	257
Goods Sold and Delivered	37	5	8	34
Rent of Property	19	3	8	14
Excess Deposit for Plumber's Permit	1,254	....	....	1,254
Assessment Actions	67	....	....	67
Assessment Proceedings	164	....	....	164
Awards and Interest on Awards	35	1	1	35
Miscellaneous Actions on Contract	239	53	62	230
Miscellaneous Actions for Sums of Money	122	65	69	118
Tax and Water Rate Cases	164	26	8	182
Personal Injuries—U. S. District Court	16	5	4	17
Personal Injuries—Supreme Court	1,299	490	304	1,485
Personal Injuries—City Court	823	283	346	760
Personal Injuries—Municipal Court	999	372	462	909
Other Personal Torts	135	27	27	135
Damage to Personal Property	540	200	173	567
Replevin and Conversion	129	97	15	211
Damage by Sewer Overflow	45	2	9	38
Damage by Water Mains	56	23	12	67
Damage to Easements (Transit)	351	29	39	341
Water Diversion	9	....	....	9

	Actions Pending Beginning Of Year	Commenced During Year	Terminated During Year	Pending End of Year
MAIN OFFICE—CONTINUED				
Miscellaneous Damage to Real Property	85	14	19	80
Admiralty Suits	61	10	12	59
Patent Cases	10	—	—	10
Injunction Suits—Supreme Court	365	94	42	417
Injunction Suits—U. S. Courts	33	1	4	30
Miscellaneous Equity Suits	64	20	11	73
Mechanic's Lien Foreclosures	552	28	18	562
Tax Lien Foreclosures	—	99	75	24
Mortgage Foreclosures	18	206	200	24
Actions to Quiet Title	48	—	—	48
Partition Suits	23	1	1	23
Possession of Land Actions	18	1	—	19
Lost Mortgage Proceedings	—	5	1	4
Tax Certiorari—Real Estate and Personal Property	34,522	6,245	3,550	37,217
Tax Certiorari—Bank Stock	47	—	—	47
Tax Certiorari—Special Franchise	179	8	—	187
Tax Certiorari—Moneyed Capital	1,282	—	—	1,282
Certiorari Proceedings	211	123	46	288
Mandamus Proceedings	660	336	176	820
Election Proceedings	—	370	370	—
Miscellaneous Proceedings	425	1,335	949	811
City Plaintiff				
Summons only served	46	—	—	46
General Actions	1,741	512	344	1,909
Tax Lien Foreclosures	306	3	—	309
Fire Commissioner, Plaintiff	29	—	—	29
Board of Education, Plaintiff	19	8	7	20
Department of Public Welfare, Plaintiff	90	30	56	64
Department of Hospitals, Plaintiff	—	30	13	17
People of State, Plaintiff	84	42	21	105
Certiorari Proceedings by City	10	—	—	10
Mandamus Proceedings by City	1	4	1	4
Condemnation Proceedings	87	53	—	140
Injunction	—	1	1	—
Total	51,482	11,656	7,592	55,546

	Actions Pending Beginning Of Year	Commenced During Year	Terminated During Year	Pending End of Year
BROOKLYN OFFICE—				
Against City				
Salary Actions—Supreme, U. S. and County Courts	5	....	1	4
Salary Actions—Municipal Court	2	2	....	4
Services and Fees	5	....	....	5
Breach of Contract	2	....	....	2
Goods Sold and Delivered	1	....	....	1
Rent of Property	3	1	....	4
Assessment Actions	1	....	....	1
Miscellaneous Actions on Contract	6	....	....	6
Miscellaneous Actions for Sums of Money	16	3	2	17
Tax and Water Rate Cases	3	....	....	3
Personal Injuries—Supreme Court	1,035	349	151	1,233
Personal Injuries—Municipal Court	620	229	107	742
Personal Injuries—City Court	440	131	106	465
Other Personal Torts	114	12	14	112
Damage to Personal Property	308	83	59	332
Replevin and Conversion	34	20	11	43
Damage by Sewer Overflow	32	2	3	31
Damage by Water Mains	31	2	2	31
Water Diversion	1	....	....	1
Miscellaneous Damage to Real Property	41	7	4	44
Injunction Suits—Supreme Court	108	1	2	107
Miscellaneous Equity Suits	8	....	1	7
Mechanic's Lien Foreclosures	5	....	....	5
Tax Lien Foreclosures	1	40	28	13
Mortgage Foreclosures	27	150	154	23
Actions to Quiet Title	13	....	....	13
Partition Suits	14	....	....	14
Certiorari Proceedings	30	....	....	30
Mandamus Proceedings	63	1	1	63
Election Proceedings	....	4	4	....
Miscellaneous Proceedings	19	9	11	17
City Plaintiff				
General Actions	4	1	....	5
Certiorari Proceedings by City	6	....	....	6
Condemnation Proceedings (exclusive of Street and Park Proceedings)	2	....	....	2
Total	3,000	1,047	661	3,386

Pending Litigation

	Actions Pending Beginning Of Year	Commenced During Year	Terminated During Year	Pending End of Year
BUREAU OF PENALTIES—				
Certiorari	....	....	....	33
Injunctions	....	....	....	11
Mandamus	....	....	....	31
Miscellaneous	....	....	....	55
Municipal Court, Municipal Term and Magistrates' Court	....	....	....	922*
General Sessions, Warrants of Seizure	....	....	....	....
Court of Special Sessions	....	....	....	232
Delinquent Jurors	....	....	....	153
Total (Bureau of Penalties)	....	....	....	1,437
BUREAU OF PERSONAL TAXES—				
Actions to Recover Arrears of Personal Taxes	....	....	....	18,044
Actions to Collect Arrears of Money Capital Taxes	....	....	....	412
Bankruptcy Proceedings	....	....	....	201
Total (Personal Tax Bureau)	....	....	....	18,657
BUREAU OF STREET OPENINGS—				
Proceedings to Acquire Title to Land for Streets, Parks, etc.	357	25	80	302
Unknown Owner Proceedings	129	943	803	269
Total (Bureau of Street Openings)	486	968	883	571

*This figure omits actions included in former years, which were handled by the department interested.

Judgments Entered

	In Favor of the City		*Against the City*	
	Number	Amount	Number	Amount
Main Office	1,076	$392,970.78	673	$1,206,662.87
Brooklyn Office	233	13,033.46	181	181,501.73
Bureau of Penalties	251	4,800.07	.....	.....
Total	1,560	$410,804.31	854	$1,388,164.60

Payments made from each appropriation during year.

The following statement of disbursements include all bills certified for payment up to December 31, 1936:

Title of Appropriations	Net Amount of Appropriation for 1936	Amount Disbursed to and Including Dec. 31, 1936	Unexpended Balance
Salaries Regular Employees..	$1,054,981.00	$1,052,454.49	$2,526.51
Salaries Temporary Employees	14,240,00	14,239.92	.08
Fees of Process Servers	4,500.00	4,108.05	391.95
Fees of Experts	85,000.00	76,570.43	8,429.57
Fees for Stenographers' Minutes	12,000.00	10,426.64	1,573.36
Fees of Special Counsel	5,200.00	4,853.79	346.21
Meal Money	10,000.00	9,997.41	2.59
Office Supplies	2,275.00	2,264.14	10.86
Equipment	12,725.00	12,207.51	517.49
Repairs and Replacements	850.00	752.97	97.03
Carfare	9,500.00	9,266.81	233.19
Telephone Service	12,000.00	8,484.67	3,515.33
Telegraph, Cable and Messenger Service	75.00	75.00	.....
General Plant Service	44,800.00	44,576.32	223.68
Contingencies	5,000.00	5,000.00	.....
Printing, Stationery, etc.	56,000.00	56,000.00	.....
Salaries and Expenses—Transit Unification Force	57,500.00	57,078.00	422.00
World's Fair Project	12,240.00	11,425.50	814.50
Special Fund	21,500.00	17,186.30	4,313.70
Total	$1,420,386.00	$1,396.967.95	$23,418.05

Bureau of Street Openings

Salaries Regular Employees ..	$371,176.00	$360,246.98	$10,929.02
Special Fund	3,500.00	3,500.00	.....
Salaries Temporary Employees	144,420.00	142,620.00	1,800.00

SUMMARY—1936

Number of regular employees allowed	552
Salaries of regular employees allowed	$1,491,636.00
Number of temporary employees	97
Salaries of temporary employees	$156,660.00
Actual number of regular employees	544
Actual salaries of regular employees	$1,462,429.05
Actual number of temporary employees	95
Actual salaries of temporary employees	$153,780.00

Moneys Received During Year 1936

	Amount Exclusive of Interest	Interest	Costs	Total
Main Office	$220,267.70	$13,140.04	$17,600.77	$251,008.51
Brooklyn Office	164.00	.45	52.40	216.85
Bureau of Personal Taxes	203.00	22.00	.....	225.00
Bureau of Penalties	49,680.19	.....	29,151.75	78,831.94
Bureau of Street Openings	.....	.....	292.35	292.35
	$270,314.89	$13,162.49	$47,097.27	$330,574.65

The following payments were also made from appropriations for former years:

Appropriations for 1935

	Net Appropriation	Disbursed During 1936	Previously Disbursed	Balance Unexpended
Fees of Experts	$97,350.00	$24,102.22	$73,247.78	$.....
Fees of Stenographers' Minutes	12,640.00	1,218.91	11,421.09	.....
Fees of Special Counsel	10,000.00	835.50	8,657.43	507.07
Meal Money	8,508.30	1,240.91	7,267.39	.....
Office Supplies	2,375.00	212.44	2,111.26	51.30
Equipment	4,400.00	640.50	3,759.50	.....
Repairs and Replacements	900.00	96.56	801.49	1,95
Carfare	8,815.40	728.76	8,086.64	.....
Telephone Service	11,650.00	1,739.83	9,910.17	.....
General Plant Service	33,061.24	2,160.10	30,896.14	5.00
Salaries and Expenses—Transit Unification Force	4,500.00	4,191.28	100.00	208.72
	$194,199.94	$37,167.01	$156,258.89	$774.04

Appropriations for 1934

Fees of Experts	$53,400.00	$3,875.00	$49,486.74	$38.26

Appropriations for 1933

Fees of Experts	$62,810.00	$11,100.00	$33,643.05	$18,066.75
General Plant Service	31,410.00	3.85	30,464.24	941.91
Total	$94,220.00	$11,103.85	$64.107.29	$19,008.66

PERSONNEL AND SALARIES

Recapitulation of Payroll in Force at End of Year

Payroll Authorized by Board of Estimate and Apportionment

Number and Salaries Authorized

	December 31, 1935		December 31, 1936	
	Number	Salaries	Number	Salaries
Regular Employees (Tax Levy)				
Main Office	299	$880,531.00	328	$926,050.00
Brooklyn Office	34	90,145.00	36	95,705.00
Bureau of Penalties	31	90,905.00	26	76,465.00
Total	364	$1,061,581.00	390	$1,098,220.00
Tax Levy Funds	.....	.....	.....	$1,078,835.00
Special Funds	.....	.....	.....	19,385.00
(Tax Levy) Code 122				
Main Office	3	$15,430.00	3	$14,240.00
Special Process Servers				
Main Office and Bureau of Penalties	7	$5,100.00	7	$4,500.00

(Temporary Employees) World's Fair Force

Main Office	.....	.....	14	$12,240.00

Regular Employees (Street Openings)

Manhattan Office	100	$248,096.00	103	$251,586.00
Brooklyn Branch Office	29	71,940.00	28	69,120.00
Queens Branch Office	20	49,590.00	21	53,970.00
Total	149	$369,626.00	152	$374,676.00
Street and Park Opening Funds	.....	.....	.....	$371,176.00
Special Funds	.....	.....	.....	3,500.00

Temporary Employees (Street Openings)

Manhattan Office	33	$38,462.76	40	$68,100.00
Brooklyn Branch Office	11	13,021.00	22	39,120.00
Queens Branch Office	11	13,021.00	21	37,200.00
Total	55	$64,504.76	83	$144,420.00
Total Authorized Force	578	$1,516,241.76	649	$1,648,296.00

Actual Payroll on Annual Basis as of December 31, 1935 and December 31, 1936

Actual Number of Regular Employees (Tax Levy) Code 120 TS

	December, 31, 1935		December 31, 1936	
	Number	Salaries	Number	Salaries
Main Office	288	$849,261.00	323	$909,190.00
Brooklyn Office	34	89,825.00	36	94,455.00
Bureau of Penalties	31	90,265.00	26	76,155.00
Total	353	$1,029,351.00	385	$1,079,800.00
Tax Levy Funds	.....	.....	.....	$1,062,614.00
Special Funds	.....	.....	.....	17,186.00

(Tax Levy) Code 122

Main Office	3	$14,240.00	3	$14,240.00

Actual Number of Special Process Servers

Main Office and Bureau of Penalties	5	$4,838.40	5	$4,108.05

Temporary Employees (World's Fair Force)

Main Office			13	$11,160.00

Bureau of Street Openings

Manhattan Office	100	$241,826.00	102	$242,741.00
Brooklyn Branch Office	28	69,500.00	28	68,685.00
Queens Branch Office	19	47,730.00	21	52,855.00
Total	147	$359,056.00	151	$364,281.00
Street and Park Opening Funds				$360,781.00
Special Funds				$3,500.00

Temporary Employees (Street Openings)

Manhattan Office	33	$38,462.76	40	$68,100.00
Brooklyn Branch Office	11	13,021.00	22	39,120.00
Queens Branch Office	11	13,021.00	20	35,400.00
Total	55	$64,504.76	82	$142,620.00
Total Actual Force	563	$1,471,990.16	639	$1,616,209.00